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Unlocking the Doors to Democracy: Election Process Reform

Robert Kerstein

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UNLOCKING THE DOORS TO DEMOCRACY: ELECTION PROCESS REFORM

ROBERT KERSTEIN*

The success of the democratic process depends on a fair, efficient, and open electoral system. Professor Kerstein studied Florida's election process during a seven-month residency at the Florida State University College of Law Policy Studies Clinic. In this Article, derived from his final report, Professor Kerstein evaluates the election process and suggests ways to improve it.

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UNLOCKING THE DOORS TO DEMOCRACY: ELECTION PROCESS REFORM

ROBERT KERSTEIN*

FLORIDA'S elections system is relatively closed compared to systems in most other states. Florida's registration procedures are restrictive, its voting hours are short, and access to the ballot for anyone other than a nominee of a major party is difficult. The result is that voter turnout is lower than in the vast majority of states. For example, Florida ranked forty-third among the states in voter turnout for the 1984 presidential election.¹

Models for reform are easy to find. The election codes of several other states go much further than Florida's in encouraging voter participation. Model codes also provide useful proposals. In this Article, the author makes some modest recommendations for changes based on an analysis of Florida's existing statutes, an examination of other states' practices, and a study of model codes.

Florida is a rapidly growing state facing difficult environmental, infrastructural, and social problems. The elections laws should encourage as many citizens as possible to participate in the process of choosing policymakers who will cope with these problems. Greater participation will result in a more open discussion of issues by candidates and citizens, and will allow more of Florida's residents to influence the future of the state. Adopting the proposals advanced in this Article will help accomplish these goals.

I. REGISTRATION

Before embarking on a comprehensive evaluation of current voter registration laws in Florida and elsewhere, it seems appropriate to address the question of why we have voter registration in the

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1. COMMITTEE FOR THE STUDY OF THE AMERICAN ELECTORATE, NON-VOTER STUDY '85-'86, *Primary Voter Turnout Lowest in 20 years, Republican Realignment Bid to be Tested in Likely Low Turnout Election* (Sept. 25, 1986) (table showing the total vote for president in the general election 1960-84) [hereinafter NON-VOTER STUDY]. This is not to suggest that these are the sole reasons for Florida's low voter turnout. For an overview of factors contributing to voter turnout, see R. WOLFINGER & S. ROSENSTONE, *WHO VOTES?* (1980).

first place. After all, one of our chief democratic goals is ostensibly to maximize citizen participation in the elections process; yet mandatory registration requirements almost inevitably hinder this participation. We must constantly ask ourselves, therefore, what policy interests our registration laws serve and whether these interests are sufficiently compelling to justify encroachment upon the right to vote.²

When registration requirements began in many locations around the turn of this century, the articulated purpose was to prevent voter fraud.³ Yet many say its actual purpose was as much to restrict immigrants from voting as to guard against corruption.⁴ The racially discriminatory motivations behind registration in the South were reflected vividly in such measures as literacy tests and early registration closing dates.⁵

Certainly, though, registration would not have survived until today if its purpose was still to limit the voting franchise of non-whites and immigrants. The truth is that fraud prevention is a legitimate reason for registration, yet at the same time, there is no doubt that restrictive registration requirements deter some people from voting. The reforms recommended in this Article, therefore, aim to maximize democratic participation without compromising the integrity of the electoral process.

2. For a discussion of registration as a *per se* restriction on the fundamental right to vote, see Note, *Voter Registration: A Restriction on the Fundamental Right to Vote*, 96 YALE L.J. 1615 (1987).

3. Burnham, *The Appearance and Disappearance of the American Voter*, in *ELECTORAL PARTICIPATION* 43 (R. Rose ed. 1980).

4. R. SMOLKA, *REGISTERING VOTERS BY MAIL: THE MARYLAND AND NEW JERSEY EXPERIENCE* 1 (1975).

5. R. SMOLKA, *ELECTION DAY REGISTRATION: THE MINNESOTA AND WISCONSIN EXPERIENCE IN 1976* 2 (1977).

A. Overview of State Registration Systems

Administrative responsibility for registration rests with county government in the majority of states⁶ and rests with cities, towns, or other regional entities in the others.⁷

The historical and still dominant method of registration in most states entails a trip to the office of the county clerk, county board of elections, or similar local authority where the registrant completes and submits the proper forms. However, some type of absentee registration is available in most states and the District of Columbia, typically for military personnel, disabled persons, and persons temporarily out of state.⁸ At least twenty states and the

6. **Alabama:** ALA. CODE § 17-4-150 (Supp. 1986); **Arizona:** ARIZ. REV. STAT. ANN. § 16-163 (1984); **Arkansas:** ARK. STAT. ANN. § 3-1304 (1976); **California:** CAL. ELEC. CODE § 16 (West 1977); **Colorado:** COLO. REV. STAT. §§ 1-1-110, -2-202 (Supp. 1986); **Delaware:** DEL. CODE ANN. tit. 15, § 201, 211 (1981); **Florida:** FLA. STAT. § 98.031 (1985); **Georgia:** GA. CODE ANN. § 21-2-40 (1987); **Hawaii:** HAW. REV. STAT. § 11-11 (1985); **Idaho:** IDAHO CODE § 34-406 (Supp. 1987); **Illinois:** ILL. ANN. STAT. ch. 46, para. 4-31 (Smith-Hurd Supp. 1987); **Indiana:** IND. CODE ANN. § 3-7-2-1 (Burns 1987); **Iowa:** IOWA CODE ANN. § 48.1 (West Supp. 1987); **Kansas:** KAN. STAT. ANN. § 25.2303(b) (1987); **Kentucky:** KY. REV. STAT. ANN. § 116.045(3) (Michie/Bobbs-Merrill Supp. 1986); **Louisiana:** LA. REV. STAT. ANN. §§ 18:51 (West 1979) (parish); **Maryland:** MD. ANN. CODE art. 33, § 3-10(a)(2) (1957) (counties and the city of Baltimore); **Minnesota:** MINN. STAT. ANN. § 201.021 (West Supp. 1987); **Missouri:** MO. ANN. STAT. §§ 115.015, 115.149 (Vernon 1980); **Montana:** MONT. CODE ANN. § 13-1-301(1) (1987); **Nebraska:** NEB. REV. STAT. § 32-216(1) (Supp. 1986); **Nevada:** NEV. REV. STAT. ANN. § 293.503(1) (Michie 1986); **New Jersey:** N.J. STAT. ANN. § 19:31-2 (West Supp. 1987); **New Mexico:** N.M. STAT. ANN. § 1-4-34 (1985); **New York:** N.Y. ELEC. LAW §§ 3-200, 5-700 (McKinney 1978); **North Carolina:** N.C. GEN. STAT. § 163-33 (1982); **Ohio:** OHIO REV. CODE ANN. §§ 3501.06, .11 (Anderson 1972 & Supp. 1986); **Oklahoma:** OKLA. STAT. ANN. tit. 26, § 4-104 (West Supp. 1987); **Oregon:** OR. REV. STAT. ANN. § 246.230 (Butterworth 1986); **South Carolina:** S.C. CODE ANN. § 7-5-10 (Law. Co-op. 1976); **South Dakota:** S.D. CODIFIED LAWS ANN. § 12-4-2 (Supp. 1987); **Tennessee:** TENN. CODE ANN. §§ 2-12-101, -201(a) (1985); **Texas:** TEX. ELEC. CODE ANN. § 12.001 (Vernon 1986); **Utah:** UTAH CODE ANN. § 20-2-7 (Supp. 1987); **Virginia:** VA. CODE ANN. §§ 24.1-29, -43 (1985); **Washington:** WASH. REV. CODE ANN. § 29.07.010(1) (Supp. 1987); **West Virginia:** W. VA. CODE § 3-2-10 (1987); **Wyoming:** WYO. STAT. §§ 22-3-104, -105 (1977).

7. **Alaska:** ALASKA STAT. § 15.10.105 (1982); **Connecticut:** CONN. GEN. STAT. ANN. § 9-15(a) (West Supp. 1987); **Maine:** ME. REV. STAT. ANN. tit. 21-A, § 101 (Supp. 1986); **Massachusetts:** MASS. GEN. LAWS ANN. ch. S4, § 11 (West 1958); **Michigan:** MICH. COMP. LAWS ANN. § 168.497 (West Supp. 1987); **Mississippi:** MISS. CODE ANN. § 23-15-35 (Supp. 1987); **New Hampshire:** N.H. REV. STAT. ANN. § 654.8 (1986); **Pennsylvania:** PA. STAT. ANN. tit. 25, §§ 623-3, -4 (Purdon Supp. 1987); **Rhode Island:** R.I. GEN. LAWS § 17-8-5 (1981); **Vermont:** VT. STAT. ANN. tit. 17, §§ 2126, 2143 (1982); **Wisconsin:** WIS. STAT. ANN. § 6.26 (West 1986). North Dakota is the only state which does not require voter registration. See N.D. CENT. CODE § 16-02 (1982).

8. **Alabama:** ALA. CODE § 17-4-134 (Supp. 1986); **Arizona:** ARIZ. REV. STAT. ANN. § 16-103 (1984); **Colorado:** COLO. REV. STAT. § 1-2-206, 207 (Supp. 1986); **Connecticut:** CONN. GEN. STAT. ANN. § 9-26 (West Supp. 1987); **Delaware:** DEL. CODE ANN. tit. 15, § 1906 (1981); **District of Columbia:** D.C. CODE ANN. §§ 1-1306(a)(10)-(13), 1-1306(d) (1987); **Florida:** FLA. STAT. § 97.063 (1985); **Georgia:** GA. CODE ANN. § 21-2-230 (1987); **Hawaii:**

District of Columbia permit anyone to register by mail.⁹ In addition, most states authorize the use of deputy registrars, who may register citizens in a variety of locations and who are appointed at the discretion of local election officials.¹⁰

HAW. REV. STAT. § 11-16 (1985); **Idaho**: IDAHO CODE §§ 34-407 (disabled), 34-410A (overseas) (1981); *Id.* § 34-410 (temporarily absent from home district) (Supp. 1987); **Illinois**: ILL. ANN. STAT. ch. 46, para. 4-10 (Smith-Hurd Supp. 1987); **Indiana**: IND. CODE ANN. § 3-7-5 (Burns 1987); **Iowa**: IOWA CODE ANN. § 48.12 (West 1973); **Kansas**: KAN. STAT. ANN. § 25-2309 (1986); **Kentucky**: KY. REV. STAT. ANN. § 116.045 (Michie/Bobbs-Merrill Supp. 1986); **Louisiana**: LA. REV. STAT. ANN. § 18:103 (West Supp. 1987); **Maine**: ME. REV. STAT. ANN. tit. 21-A, § 153-54 (Supp. 1986); **Maryland**: MD. ANN. CODE art. 33, § 3-7 (Supp. 1985); **Massachusetts**: MASS. GEN. LAWS ANN. ch. 51, § 42A (West Supp. 1987); **Michigan**: MICH. COMP. LAWS ANN. § 168.504 (West 1967); **Minnesota**: MINN. STAT. ANN. § 201.061 (West Supp. 1987); **Mississippi**: MISS. CODE ANN. § 23-15-35 (Supp. 1987); **Missouri**: MO. ANN. STAT. § 115.159 (1949); **Montana**: MONT. CODE ANN. § 13-2-214 (1987); **Nebraska**: NEB. REV. STAT. § 32-221 (Supp. 1986); **Nevada**: NEV. REV. STAT. ANN. § 293.553 (Michie 1986); **New Hampshire**: N.H. REV. STAT. ANN. § 654:16-20 (1986); **New Jersey**: N.J. STAT. ANN. § 19:31-6.3 (West Supp. 1987); **New Mexico**: N.M. STAT. ANN. § 1-4-7 (1978); **New York**: N.Y. ELEC. LAW § 5-210 (McKinney Supp. 1987); **Ohio**: OHIO REV. CODE ANN. § 3503.11 (Anderson Supp. 1986); **Oregon**: OR. REV. STAT. ANN. § 247.015 (Butterworth 1986); **Pennsylvania**: PA. STAT. ANN. tit. 25, § 951-18.1, -18.2 (Purdon Supp. 1987); **Rhode Island**: R.I. GEN. LAWS § 17-9-10 (Supp. 1986); **South Carolina**: S.C. CODE ANN. § 7-15-110 (Law. Co-op. Supp. 1986); **South Dakota**: S.D. CODIFIED LAWS ANN. § 12-4-4.1 (1982); **Tennessee**: TENN. CODE ANN. §§ 2-2-110 (1985); **Texas**: TEX. ELEC. CODE ANN. § 13.121 (Vernon 1986); **Utah**: UTAH CODE ANN. § 20-2-7 (Supp. 1987); **Vermont**: VT. STAT. ANN. tit. 17, § 2532(b) (Supp. 1986); **Virginia**: VA. CODE ANN. § 24.1-48 (1985); **West Virginia**: W. VA. CODE §§ 3-2-24, 3-2-41 (1987); **Wisconsin**: WIS. STAT. ANN. § 6.30(2)-(4) (West 1986); **Wyoming**: WYO. STAT. § 22-3-117 (Supp. 1987).

9. **Alaska**: ALASKA STAT. § 15.07.050 (1982); **California**: CAL. ELEC. CODE §§ 301, 303 (West 1977); **Delaware**: DEL. CODE ANN. tit. 15, § 2012 (1981); **District of Columbia**: D.C. CODE ANN. § 1-1311 (1987); **Hawaii**: HAW. REV. STAT. § 11-16 (1985); **Iowa**: IOWA CODE ANN. § 48.3 (West Supp. 1987); **Kansas**: KAN. STAT. ANN. § 25-2309 (1986); **Kentucky**: KY. REV. STAT. ANN. § 116.045 (Michie/Bobbs-Merrill Supp. 1986); **Minnesota**: MINN. STAT. ANN. § 201.061 (West Supp. 1987); **Montana**: MONT. CODE ANN. § 13-2-203 (1987); **Nebraska**: NEB. REV. STAT. § 32-221 (Supp. 1986); **New Jersey**: N.J. STAT. ANN. § 19:31-6, -6.4 (West Supp. 1987); **New Mexico**: N.M. STAT. ANN. § 1-4-5 (1987); **Ohio**: OHIO REV. CODE ANN. § 3503.11 (Anderson Supp. 1986); **Pennsylvania**: PA. STAT. ANN. tit. 25, § 951-81.2 (Purdon Supp. 1987); **South Carolina**: S.C. CODE ANN. § 7-5-155 (Law. Co-op. Supp. 1986); **Tennessee**: TENN. CODE ANN. § 2-2-115 (1985); **Texas**: TEX. REV. CIV. STAT. ANN. § 13.121 (Vernon 1986); **Utah**: UTAH CODE ANN. § 20-2-7 (Supp. 1987); **West Virginia**: W. VA. CODE § 3-2-41 (1987); **Wisconsin**: WIS. STAT. ANN. § 6.301(4) (West 1986).

10. Deputy registrars, for instance, may be able to register citizens at workplaces, shopping malls and universities. **Alabama**: ALA. CODE § 17-4-158 (Supp. 1986); **Arizona**: ARIZ. REV. STAT. ANN. § 16-132 (Supp. 1986); **California**: CAL. ELEC. CODE § 302 (West 1977); **Connecticut**: CONN. GEN. STAT. ANN. § 9-192 (West Supp. 1987); **Florida**: FLA. STAT. § 98.271 (1986); **Georgia**: GA. CODE ANN. § 21-2-212 (a)(1) (1987); **Hawaii**: HAW. REV. STAT. § 11-15(e) (1985); **Idaho**: IDAHO CODE § 34-406(2) (Supp. 1987); **Illinois**: ILL. ANN. STAT. ch. 46, para. 4-6 (Smith-Hurd Supp. 1987); **Indiana**: IND. CODE ANN. § 3-7-2-15 (Burns Supp. 1987); **Iowa**: IOWA CODE ANN. § 48.1 (West Supp. 1987); **Kansas**: KAN. STAT. ANN. § 25.2303 (Supp. 1985); **Louisiana**: LA. REV. STAT. ANN. § 18:59 (West Supp. 1987); **Maine**: ME. REV. STAT. ANN. tit. 21-A § 102 (Supp. 1986); **Massachusetts**: MASS. GEN. LAWS ANN. ch. 54, § 11 (West 1975); **Mississippi**: MISS. CODE ANN. § 23-15-223 (Supp. 1987); **Mis-**

The vast majority of states have a registration cutoff preceding an election. In several states and the District of Columbia this deadline is set thirty days before an election.¹¹ At least four states close the books even earlier.¹² Nearly half of the states have deadlines of less than thirty days, though this feature is partially offset in some of them by voter residency requirements of at least thirty

souri: MO. ANN. STAT. § 115.143 (Vernon 1987); **Montana:** MONT. CODE ANN. § 13-2-102 (1987); **Nebraska:** NEB. REV. STAT. § 32-212 (Supp. 1986); **Nevada:** NEV. REV. STAT. ANN. § 293.505 (Michie 1986); **New Jersey:** N.J. STAT. ANN. § 19:32-2 (West Supp. 1987); **New Mexico:** N.M. STAT. ANN. § 1-4-40, -41 (Supp. 1987); **New York:** N.Y. ELEC. LAW § 3-300 (McKinney 1976); **North Carolina:** N.C. GEN. STAT. § 163-80 (Supp. 1985); **Ohio:** OHIO REV. CODE ANN. § 3503.11 (Anderson Supp. 1986); **Oklahoma:** OKLA. STAT. ANN. tit. 26, § 4-105 (West Supp. 1987); **Oregon:** OR. REV. STAT. ANN. § 247.012(4) (Butterworth 1986); **Pennsylvania:** PA. STAT. ANN. tit. 25, § 623-5(a) (Purdon Supp. 1987); **Rhode Island:** R.I. GEN. LAWS § 17-9-5 (1981) ("agents"); **South Carolina:** S.C. CODE ANN. § 7-5-20 (Law. Co-op. Supp. 1986); **South Dakota:** S.D. CODIFIED LAWS ANN. § 12-4-2 (Supp. 1987); **Tennessee:** TENN. CODE ANN. § 2-2-101 (1985); **Texas:** TEX. ELEC. CODE ANN. § 12.006 (Vernon 1986); **Washington:** WASH. REV. CODE ANN. § 29.07.010 (Supp. 1987); **West Virginia:** W. VA. CODE § 3-2-11 (1987); **Wisconsin:** WIS. STAT. ANN. § 6:26 (West Supp. 1987); **Wyoming:** WYO. STAT. § 22-1-102(N) (1987).

11. **Alaska:** ALASKA STAT. § 15.07.070(d) (Supp. 1987); **District of Columbia:** D.C. CODE ANN. § 1-1311(g) (1987); **Florida:** FLA. STAT. § 98.051(3)(a) (1985); **Georgia:** GA. CODE ANN. § 21-2-227 (1987); **Hawaii:** HAW. REV. STAT. § 11-24 (1985); **Kentucky:** KY. REV. STAT. ANN. § 116.045 (Michie/Bobbs-Merrill Supp. 1986); **Louisiana:** LA. REV. STAT. ANN. § 18:135 (West Supp. 1987) (30 days prior to primaries; 24 days prior to general elections); **Michigan:** MICH. COMP. LAWS ANN. § 168.497 (West Supp. 1987); **Mississippi:** MISS. CODE ANN. § 23-15-37 (Supp. 1987); **Montana:** MONT. CODE ANN. § 13-2-301 (1987); **New York:** N.Y. ELEC. LAW § 5-200 (McKinney Supp. 1987); **Ohio:** OHIO REV. CODE ANN. § 3503.11(A) (Anderson Supp. 1986); **Pennsylvania:** PA. STAT. ANN. tit. 25, § 623-17 (Purdon Supp. 1987); **Rhode Island:** R.I. GEN. LAWS § 17-9-3 (1981); **South Carolina:** S.C. CODE ANN. § 7-5-150 (Law. Co-op. 1976); **Virginia:** VA. CODE ANN. § 24.1-49 (1985); **Washington:** WASH. REV. CODE ANN. § 29.07.160 (Supp. 1987); **West Virginia:** W. VA. CODE § 3-2-30 (1987); **Wyoming:** WYO. STAT. § 22-3-102 (1977).

12. **Arizona:** ARIZ. REV. STAT. ANN. § 16-120 (Supp. 1986) (50 days prior to election); **Colorado:** COLO. REV. STAT. § 1-2-202 (Supp. 1986) (32 days prior to election); **Nevada:** NEV. REV. STAT. ANN. § 293.560.1 (Michie 1986) (noncomputerized registers close five Saturdays prior to general election); **New Mexico:** N.M. STAT. ANN. § 1-4-8 (1985) (42 days prior to election).

days.¹³ Only Maine, Minnesota, and Wisconsin permit election day registration.¹⁴

"Purging" statutes mandate cancellation of an individual's registration in certain circumstances,¹⁵ most commonly if the registrant

13. **Alabama:** ALA. CODE § 17-4-120 (Supp. 1986) (10-day deadline); **Arkansas:** ARK. CONST. amend. 51, § 9(b) (20-day deadline); **California:** CAL. ELEC. CODE § 305 (West Supp. 1987) (28-day deadline); **Delaware:** DEL. CODE ANN. tit. 15, § 2001 (Supp. 1986) (third Saturday in October); **Idaho:** IDAHO CODE § 34-408(1) (Supp. 1987) (17 days—registration with official precinct registrars; 10 days—registration with county clerk; 30-day registration requirement § 34.402); **Illinois:** ILL. ANN. STAT. ch. 46, para. 4-6 (Smith-Hurd Supp. 1987) (28 days—population less than 500,000; 30-day residency required for this population); **Indiana:** IND. CODE ANN. § 3-7-3-5 (Burns Supp. 1987) (29-day deadline; 30-day residency requirement); **Iowa:** IOWA CODE ANN. § 48.11 (West Supp. 1987) (10 days prior to election); **Kansas:** KAN. STAT. ANN. § 25-2311 (Supp. 1985) (20-day deadline); *Id.* § 25-1801 (45-day residency); **Maryland:** MD. ANN. CODE § 3-8 (Supp. 1985) (fifth Monday preceding election; 29-day residency); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 51, § 26 (West Supp. 1987) (28-day deadline); **Minnesota:** MINN. STAT. ANN. § 201.061 (West Supp. 1987) (20-day deadline); **Missouri:** MO. ANN. STAT. § 115.135 (Vernon Supp. 1987) (fourth Wednesday before election); **Nebraska:** NEB. REV. STAT. § 32-216(3) (Supp. 1986) (second Friday before election); **Nevada:** NEV. REV. STAT. ANN. § 293.560.1 (Michie 1986) (third Saturday before general election); **New Hampshire:** N.H. REV. STAT. ANN. § 654:27 (1986) (10 days prior to election); **New Jersey:** N.J. STAT. ANN. § 19:31-6 (West Supp. 1987) (29-day deadline; 30-day residency); **North Carolina:** N.C. GEN. STAT. § 163-67 (Supp. 1985) (21-day deadline); N.C. CONST. art. VI, § 2(1) (30-day residency); **Oklahoma:** OKLA. STAT. ANN. tit. 26, § 4-110 (West Supp. 1987) (10-day deadline); *Id.* § 4-103; (30-day residency) **Oregon:** OR. CONST. art. II, § 2(b) (six-month residency); OR. REV. STAT. ANN. § 247.025 (Butterworth 1986) (20-day deadline); **South Dakota:** S.D. CODIFIED LAWS ANN. § 12-4-5 (1982) (15-day deadline); **Tennessee:** TENN. CODE ANN. § 2-2-109 (1985); **Vermont:** VT. STAT. ANN. tit. 17, § 2144 (1982) (third Saturday before election); *Id.* § 2122 (no residency requirements); **Wisconsin:** WIS. STAT. ANN. § 6.28 (West Supp. 1987) (second Wednesday before election); *Id.* § 6.10 (no residency requirements).

14. **Maine:** ME. REV. STAT. ANN. tit. 21-A, § 122(4) (Supp. 1987); **Minnesota:** MINN. STAT. ANN. § 201.061.3 (West Supp. 1987); **Wisconsin:** WIS. STAT. ANN. § 6.29 (West 1986). In addition, Connecticut allows registration on the last weekday before the regular election. CONN. GEN. STAT. ANN. § 9-17(b) (West Supp. 1987).

15. **Alabama:** ALA. CODE § 17-4-132 (Supp. 1986); **Alaska:** ALASKA STAT. § 15.07.130 (1982); **Arizona:** ARIZ. REV. STAT. ANN. § 16-165 (1984); **Arkansas:** ARK. CONST. amend. 51, § 11; **California:** CAL. ELEC. CODE § 701 (West Supp. 1987); **Colorado:** COLO. REV. STAT. §§ 1-2-222, -103 (Supp. 1986); **Connecticut:** CONN. GEN. STAT. ANN. § 9-35 (West Supp. 1987); **Delaware:** DEL. CODE ANN. tit. 15, § 1702-05 (1981); **District of Columbia:** D.C. CODE ANN. § 1-1311 (1987); **Florida:** FLA. STAT. § 98.301 (1985); **Georgia:** GA. CODE ANN. § 21-2-232, -233 (1987); **Hawaii:** HAW. REV. STAT. § 11-23 (1987); **Idaho:** IDAHO CODE § 34-433 (1981); **Illinois:** ILL. ANN. STAT. ch. 46, para. 4-17 (Smith-Hurd Supp. 1987); **Indiana:** IND. CODE ANN. § 3-7-9-1, -10, -11 (Burns Supp. 1987); **Iowa:** IOWA CODE ANN. §§ 48.10, 48.30 (West Supp. 1987); **Kansas:** KAN. STAT. ANN. § 25-2316(c) (1986); **Kentucky:** KY. REV. STAT. ANN. §§ 116.115, .125 (Michie/Bobbs-Merrill 1982 & Supp. 1986); **Louisiana:** LA. REV. STAT. ANN. § 18:176 (West Supp. 1987); **Maine:** ME. REV. STAT. ANN. tit. 21-A, §§ 161-164 (Supp. 1986); **Maryland:** MD. ANN. CODE art. 33, § 3-20 (Supp. 1985); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 51, § 38 (West Supp. 1987); **Michigan:** MICH. COMP. LAWS ANN. § 168.502(A) (West Supp. 1987); **Minnesota:** MINN. STAT. ANN. § 201.17 (West Supp. 1987); **Mississippi:** MISS. CODE ANN. § 23-15-159(2) (Supp. 1987); **Missouri:** MO. ANN. STAT. § 115.199 (Vernon 1980); *Id.* § 115.195 (Supp. 1987); **Montana:** MONT. CODE ANN. §§

suffers mental incapacity or is convicted of a felony. Only two states, Only Utah has no purging statute. While ten states do not cancel a voter's registration for failure to vote,¹⁶ seven states cancel registration if a voter failed only to participate in the last general election.¹⁷ Eighteen states and the District of Columbia purge voters who have been inactive for four or more years;¹⁸ one state

13-2-401, -402 (1987); **Nebraska**: NEB. REV. STAT. § 32-212 (Supp. 1986); **Nevada**: NEV. REV. STAT. ANN. § 293.537 (Michie 1986); **New Hampshire**: N.H. REV. STAT. ANN. §§ 654:36-39 (1986); **New Jersey**: N.J. STAT. ANN. §§ 19:31-5, -15 to -17, -19 (West 1964 & Supp. 1987); **New Mexico**: N.M. STAT. ANN. § 1-4-24 (1985); **New York**: N.Y. ELEC. LAW § 5-400 (McKinney 1978); **North Carolina**: N.C. GEN. STAT. § 163-69 (Supp. 1985); **Ohio**: OHIO REV. CODE ANN. §§ 3503.21, .22 (Anderson Supp. 1986); **Oklahoma**: OKLA. STAT. ANN. tit. 26, §§ 4-120, -120.6 (West Supp. 1986); **Oregon**: OR. REV. STAT. ANN. §§ 247.550 to 247.570 (Butterworth 1986); **Pennsylvania**: PA. STAT. ANN. tit. 25, § 951-29 (Purdon 1963); **Rhode Island**: R.I. GEN. LAWS § 17-1-3.1 (Supp. 1986); **South Carolina**: S.C. CODE ANN. § 7-3-20 (Law. Co-op. 1986); **South Dakota**: S.D. CODIFIED LAWS ANN. § 12-4-19 (1982); **Tennessee**: TENN. CODE ANN. § 2-2-106 (1985); **Texas**: TEX. ELEC. CODE ANN. ch. 16 (Vernon 1986); **Vermont**: VT. STAT. ANN. tit. 17, § 2150 (1982); **Virginia**: VA. CODE ANN. §§ 24.1-59 (Supp. 1987); **Washington**: WASH. REV. CODE ANN. §§ 2910.010, .080 (Supp. 1987); **West Virginia**: W. VA. CODE § 3-2-3 (1987); **Wisconsin**: WIS. STAT. ANN. § 6.50 (West 1986); **Wyoming**: WYO. STAT. § 22-3-115 (1977).

16. See **Alabama**: ALA. CODE § 17-4-13 (Supp. 1986); **California**: CAL. ELEC. CODE § 701 (West Supp. 1987); **Connecticut**: CONN. GEN. STAT. ANN. §§ 9-35, 9-40A (West Supp. 1987) (no removal for failure to vote, except for members of the United States armed forces who fail to vote during the four preceding calendar years. *Id.* § 9-40a (Supp. 1987)); **Massachusetts**: MASS. GEN. LAWS ANN. ch. 51, § 38 (West Supp. 1987); **Missouri**: MO. ANN. STAT. § 115.119 (Vernon 1980); **Nebraska**: NEB. REV. STAT. § 32-216 (Supp. 1986); **New Hampshire**: N.H. REV. STAT. ANN. § 654:36-39 (1986) (re-registration required every 10 years); **South Carolina**: S.C. CODE ANN. § 7-3-20 (Law. Co-op. 1976) (no removal for failure to vote, but re-registration required every 10 years); **Texas**: TEX. ELEC. CODE ANN. ch. 16 (Vernon 1986); **Utah**: UTAH CODE ANN. § 20-2-24 (1986).

17. **Arizona**: ARIZ. REV. STAT. ANN. § 16-166 (1984); **Colorado**: COLO. REV. STAT. § 1-2-222 (1986); **Hawaii**: HAW. REV. STAT. § 11-17 (1985) (voter must have also failed to vote in the preceding primary election); **Kansas**: KAN. STAT. ANN. § 25-2316(c) (1986); **Montana**: MONT. CODE ANN. § 13-2-401 (1987); **Nevada**: NEV. REV. STAT. ANN. § 293.540(8) (Michie 1986); **New Mexico**: N.M. STAT. ANN. § 1-4-28 (1978).

18. **Arkansas**: ARK. CONST. amend. 51, § 11; **Connecticut**: CONN. GEN. STAT. ANN. § 9-40a (West Supp. 1987) (only for members of the United States armed forces); **District of Columbia**: D.C. CODE ANN. § 1-1311(a)(2-3) (1987); **Idaho**: IDAHO CODE § 34-435 (1981); **Illinois**: ILL. ANN. STAT. ch. 46, para. 4-17 (Smith-Hurd Supp. 1987); **Iowa**: IOWA CODE ANN. § 48.31 (West Supp. 1987); **Louisiana**: LA. REV. STAT. ANN. § 18:191 (West Supp. 1987); **Minnesota**: MINN. STAT. ANN. § 201.171 (West Supp. 1987); **Mississippi**: MISS. CODE ANN. § 23-15-159(1) (Supp. 1987); **New Jersey**: N.J. STAT. ANN. § 19:31-5 (West Supp. 1987); **North Carolina**: N.C. GEN. STAT. § 163-69 (1982) (purged for failure to vote in two consecutive presidential elections and all elections in between); **Ohio**: OHIO REV. CODE ANN. § 3503.21 (Anderson Supp. 1986); **Oklahoma**: OKLA. STAT. ANN. tit. 26, § 4-120.2 (West Supp. 1986); **Rhode Island**: R.I. GEN. LAWS § 17-10-1(b) (Supp. 1986) (five years); **South Dakota**: S.D. CODIFIED LAWS ANN. § 12-4-19 (1982); **Tennessee**: TENN. CODE ANN. § 2-2-106 (1985); **Vermont**: VT. STAT. ANN. tit. 17, § 2150(d)(3) (1982); **Virginia**: VA. CODE ANN. § 24.1-59 (Supp. 1987); **Wisconsin**: WIS. STAT. ANN. § 6.50 (West 1986).

purges voters who have been inactive for three years;¹⁹ and seven states purge voters who have been inactive for two years.²⁰

Perhaps the most striking similarity among the various state registration systems is that the burden of registering in all cases is on the individual citizen. The consequences of this burden, virtually unique to the United States among all Western democracies,²¹ are discussed below.

B. Overview of Registration in Florida

Florida is one of the majority of states with county-based administration.²² The chief election official in each county is the county supervisor of elections who serves a four-year term.²³

Citizens must generally register at the office of the county supervisor or at approved branch locations. Citizens may also register with deputy registrars wherever the deputies conduct registration. These deputy registrars are appointed at the discretion of the county supervisor and may include volunteers. Absentee registration is also available upon a written request by those unable to register in person.²⁴

Florida law requires that the supervisor of elections' office be open Monday through Friday for at least eight hours.²⁵ The office may be open for another ten hours during the week if adequate notice is given.²⁶ During the thirty-day period preceding the closing of registration books before any statewide or federal election, the office must also stay open on Saturdays for at least eight

19. GA. CODE ANN. § 21-2-231(b) (1987).

20. **Alaska:** ALASKA STAT. § 15.07.130 (1982); **Delaware:** DEL. CODE ANN. tit. 15, § 1704 (1981); **Florida:** FLA. STAT. § 98.081 (1985); **Indiana:** IND. CODE ANN. § 3-7-9-1 (Burns Supp. 1987); **New York:** N.Y. ELEC. LAW § 5-406 (McKinney 1978); **Oregon:** OR. REV. STAT. ANN. § 247.565 (Butterworth 1986); **Pennsylvania:** PA. STAT. ANN. tit. 25, § 951-38 (Purdon Supp. 1987).

In addition, New Mexico cancels the registration of a voter who misses any primary or general election, N.M. STAT. ANN. § 1-4-28 (1985); Montana purges a voter who fails to vote in any presidential general election, MONT. CODE ANN. § 13-2-401 (1987); and Washington cancels registration for failure to vote in a primary for 24 months or in the last presidential election, WASH. REV. CODE ANN. § 29.10.080 (Supp. 1987).

21. Glass, Squire, & Wolfinger, *Voter Turnout: An International Comparison*, 6 PUB. OPINION 49, 52 (Dec./Jan. 1984).

22. FLA. STAT. § 98.031 (1985); see *supra* note 6 and accompanying text.

23. FLA. CONST. art. VIII, § 1(a). The only exception is Dade County. It has an appointed head of elections. DADE COUNTY, FLA., CHARTER § 8.01(B) (1987).

24. FLA. STAT. § 97.063(2) (1985).

25. *Id.* § 98.051(1)(a).

26. *Id.* § 98.051(1)(b).

hours.²⁷ Registration closes in Florida thirty days before an election.²⁸ Actually, citizens may still register within this thirty-day period, but they are ineligible to vote in the upcoming election.²⁹ Of course a person who moves to another Florida county after the thirty-day cutoff may vote absentee via his former county (if registered there) for statewide offices and issues, United States Senate seats, and for president and vice president.³⁰

If registered electors fail to vote in a two-year period without requesting that their registration be updated, their registration will be temporarily cancelled.³¹ Further, if they fail to respond to the cancellation notice within three years, the cancellation becomes permanent.³² Florida also purges convicted felons from its registration rolls.³³

C. *Criticism and Suggested Reform of Florida's Registration Provisions*

Registration laws clearly make a difference in our electoral process. They directly affect the number of people who register and, thus, the rate of voter turnout among citizens eligible to vote. The type of automatic registration that exists in many European democracies will not likely be enacted in any of the United States, including Florida.³⁴ Nor is it likely that the United States will adopt a countrywide canvas or enumeration as exists in Canada.³⁵ The belief that individuals bear responsibility for registration will probably continue to guide public policy in all of our states.

However, beyond a concern for fraud, there is no rationale for registration laws which decrease the probability that citizens will register. Thus, state governments should open all avenues for registration. Florida should adopt some procedures from other states which are more aggressive in trying to register their residents.

The percentage of eligible citizens who were registered to vote in Florida for the 1984 election was 65.4%, compared with a nation-

27. *Id.* § 98.051(1)(c). See also *id.* § 97.021(23) (defining "weekday").

28. *Id.* § 98.051(3).

29. *Id.* § 98.051(3)(b).

30. *Id.* § 97.102(1).

31. *Id.* § 98.081(1).

32. *Id.* § 98.081(2).

33. *Id.* § 98.201(1).

34. Glass, Squire, & Wolfinger, *supra* note 21, at 54.

35. *Id.*

wide figure of about 73%.³⁶ Only six states plus the District of Columbia had lower registration rates than Florida.³⁷ Although the percentage of the eligible voters who were registered in Florida from 1980 to 1984 increased by 1.8%, this was less than the nationwide increase from 69.8% to 73%.³⁸ However, 75% of those Floridians registered actually voted in the 1984 general election, a percentage higher than the nationwide average.³⁹ If more Florida citizens were registered, the total number of people actually voting would probably increase.

Both the large influx of migrants to our state and the high proportion of elderly residents make a simple and convenient registration procedure necessary. Under our present system, newcomers may not think of registering until it is too late, and elderly people may find it difficult to get to the registration location. Thus, it is crucial to actively take steps to register these and other eligible voters to increase voter turnout.

1. Mail Registration

Florida's mail registration provisions are rather restrictive, allowing only those unable to register in person to register by mail.⁴⁰ In Florida, individuals who claim that they are unable to register in person must request a form from the county supervisor.⁴¹ Citizens in states with comprehensive mail registration systems can simply pick up mail registration forms at supermarkets or post offices. Admittedly, Florida's provision is preferable to no provision at all, but the state is "missing the boat" by not making mail regis-

36. NON-VOTER STUDY, *supra* note 1 (table showing percentage of eligible voters who registered).

37. *Id.* (Georgia, 65.0%; Hawaii, 55.5%; Nevada, 51.7%; New Mexico, 65.3%; South Carolina, 58.5%; Virginia, 60.7%).

38. *Id.* (table showing comparisons of total registration).

39. *Id.* (table showing the turnout of registered voters for general elections from 1984-1976).

40. FLA. STAT. § 97.063(1) (1985).

41. United States citizens who are permanent residents of Florida residing outside the United States, and members of the Armed Forces and Merchant Marines may use the federal post card to request a registration form. FLA. STAT. § 97.063(2) (1985). All other Florida residents requesting an absentee registration form must make the request in writing, stating that "registering in person would cause a hardship due to temporary absence from the state or physical disability or stating that he is unable to register in person." *Id.* Inconvenience is not a permissible reason for not being able to vote in person, at least not in some counties. When I called the Hillsborough County Voter Registration number (272-5850), I was told I could not register by mail because I had to take the oath in person. Phone conversation (Nov. 4, 1987). Therefore, Florida's mail registration provisions clearly are more restrictive than those in states which allow anyone to register by mail.

tration more convenient and using it as one of the state's principal registration techniques.

Texas introduced across-the-board mail registration to this country in 1941.⁴² Since that time, at least twenty other states and the District of Columbia have implemented the measure.⁴³ Maryland, for instance, reports that a full 60% of its voters register by mail, though other opportunities and methods of registration abound in that state.⁴⁴ Since enacting mail registration in 1972, Alaska has experienced a 20.6% increase in registered voters and a concomitant 9% increase in voter turnout.⁴⁵ Moreover, Iowa's proportion of registered voters increased by 14% in the first four years following introduction of the mail system.⁴⁶ These statistics indicate that many citizens use mail registration when it is readily available and that it can increase registration levels dramatically.

Normally, one would expect such remarkable results to be accompanied by heavy costs, but experience has shown that simply is not true with mail registration. Because citizens can register at their own convenience, registration tends to be more evenly distributed throughout the year; last minute rushes to meet registration deadlines are less common.⁴⁷ This, in turn, means registrars may make more efficient use of their time just before elections.

Moreover, though the government must fund the increased mailing costs that mail registration brings, administration is easier and fewer registrars are needed under the system. Overall costs of mail registration may, therefore, be considerably less than the costs of other methods. Indeed, New York estimates that in-person registration costs \$10 per person while mail registration costs only \$1 per person.⁴⁸

There are no indications that mail registration has compromised the integrity of voting systems. An early study in New Jersey and Maryland concluded that election administrators generally sup-

42. THE NATIONAL CENTER FOR POLICY ALTERNATIVES, VOTER REGISTRATION AND THE STATES: EFFECTIVE POLICY APPROACHES TO INCREASING PARTICIPATION 19 (1986) [hereinafter POLICY ALTERNATIVES].

43. See *supra* note 9 and accompanying text.

44. POLICY ALTERNATIVES, *supra* note 42, at 21.

45. NON-VOTER STUDY, *supra* note 1 (tables showing comparisons of total registration and turnout of registered voters for general elections from 1984-1976).

46. POLICY ALTERNATIVES, *supra* note 42, at 19. An early study by Richard Smolka indicates that mail registration did not significantly increase registration initially in Maryland and New Jersey. However, he stressed that his results were preliminary. R. SMOLKA, *supra* note 4, at 57-62.

47. POLICY ALTERNATIVES, *supra* note 42, at 19.

48. *Id.*

ported the process.⁴⁹ More recently, the Maryland Administrator of Elections wrote, "[A]fter a million mail registrations and eleven years operational experience, I can cite only a single instance of fraudulent registration—and that voter came in person to the county election office!"⁵⁰ Ohio's Director of Elections Programs similarly reported, "When it [mail registration] was first introduced in 1977, one member of the legislature who opposed it tried to register fraudulently and was caught. He claimed he was testing the system and was not prosecuted, but he was embarrassed and the system did pick up the attempt."⁵¹

The evidence cited above demonstrates that a comprehensive, easy-to-use mail registration system can yield substantial gains in a state's registration levels without imposing substantial burdens. If Florida is truly seeking meaningful election reform, its legislators should give serious consideration to revising mail registration. Mail registration forms should be widely available at post offices and other public and private facilities. In some counties, arrangements could be made to include forms with the first utility bill after a new hook-up. This would make it even easier for new residents to register.

Another positive step would be to allow the federal postcard application to serve as the voter registration form for overseas citizens rather than just an application for one. Several states currently permit this.⁵² The Florida Constitution requires a registrant to swear to "protect and defend" Florida's constitution,⁵³ and the present federal postcard application does not contain the necessary language. However, the director of the Federal Voting Assistance Program has noted that his agency is considering adding the neces-

49. R. SMOLKA, *supra* note 4, at 84.

50. POLICY ALTERNATIVES, *supra* note 42, at 22 (quoting Marie Garber, Maryland Administrator of Elections).

51. *Id.* at 29 (quoting Margaret Rosenfield, Director of Elections Programs, Ohio Secretary of State's Office).

52. **Arizona:** ARIZ. REV. STAT. ANN. § 16-103 (1984); **Colorado:** COLO. REV. STAT. § 1-2-207 (1980); **Connecticut:** CONN. GEN. STAT. ANN. § 9-26 (West 1987); **Florida:** FLA. STAT. § 97.064 (1985) (permits re-registration by federal postcard application only); **Georgia:** GA. CODE ANN. § 21-2-230(e) (1987); **Hawaii:** HAW. REV. STAT. § 11-16 (1985); **Idaho:** IDAHO CODE § 34-410 (Supp. 1987); **Illinois:** ILL. ANN. STAT. ch. 46, para. 20-2, 20-2.1 (Smith-Hurd Supp. 1987); **Maine:** ME. REV. STAT. ANN. tit. 21-A, § 154 (Supp. 1986); **Montana:** MONT. CODE ANN. § 13-2-214 (1987); **North Carolina:** N.C. GEN. STAT. § 163-247, -249 (1982); **Texas:** TEX. ELEC. CODE ANN. § 101.003, .006 (Vernon 1986).

53. FLA. CONST. art. VI, § 3.

sary language to the application.⁵⁴ If this change is made, the necessary revisions should be made in Florida's statutes to make it easier for our overseas citizens to register and vote.

2. *Registration Deadlines*

Another registration provision subject to criticism is Florida's thirty-day registration deadline. Registration deadlines have the greatest impact on voter turnout among variables such as regular registration office hours, weekend office hours, and the availability of absentee registration.⁵⁵ Indeed, with the aid of complex statistical techniques, researchers conclude that thirty-day registration deadlines, as opposed to no deadline at all, decrease the probability of an individual voting by up to 9%.⁵⁶

The impact of early deadlines may be less severe the more education people have. Education often increases individuals' political interest, making them more willing to overcome the inconveniences associated with registration, such as early deadlines and limited registration office hours. Education also tends to increase bureaucratic know-how, better equipping citizens to obtain pertinent registration information.⁵⁷

Less educated people, on the other hand, frequently lack the basic knowledge of when and how to register. Often they have a seasonal interest in politics that peaks only on the eve of an election. By the time these individuals are sufficiently motivated to register, the deadline may have long since passed. In the words of elections researchers Rosenstone and Wolfinger, "[E]ducation produces both a bigger incentive to jump the hurdle and a lower hurdle."⁵⁸

In sum, the closer the registration deadline is to election day, the greater the number of registered voters, the greater voter turnout, and the more representative of all cross-sections of society the electorate becomes. In light of this, Florida's thirty-day deadline is unsatisfactory. Florida should join the many states with deadlines of less than thirty days.⁵⁹

54. Interview with Sarah Bradshaw, H.R. Comm. on Ethics and Elections (Mar. 26, 1987).

55. Rosenstone & Wolfinger, *The Effect of Registration Laws on Voter Turnout*, 72 AM. POL. SCI. REV. 22, 31 (1978). This article was based on an analysis of turnout in the 1972 presidential election.

56. *Id.*

57. *Id.* at 28.

58. *Id.*

59. See *supra* notes 13 and 14.

The Legislature should mandate that the registration books remain open at least until two weeks prior to the election. As mentioned above, studies indicate that moving in this direction is the single most important change available to increase registration rates.⁶⁰ True, a great deal of administrative effort by many county supervisors will have to accompany this change. However, the potential benefits make this effort worthwhile. Other states keep their registration books open until close to the election. Florida can too.

Not everyone would agree with this suggestion. The Legislative Chairman of the Florida State Association of Supervisors of Elections contends that Florida's thirty-day registration deadline is necessary.⁶¹ He argues that supervisors must perform a myriad of tasks during the days immediately preceding an election. Elections supervisors, he asserts, need the thirty-day respite from registration rushes to complete their tasks on time without endangering the integrity of the state's election system.

This concern is understandable and has been articulated by election officials in many states that contemplated decreasing the registration cut-off time.⁶² However, all of the special duties that befall supervisors before an election could be carried on simultaneously with the ordinary duties of registration if extra personnel were temporarily employed. Perhaps volunteer deputy registrars could help in this capacity.

Besides, Florida law only prevents citizens from *voting* in the next election if they miss the thirty-day deadline; it does not prevent them from *registering* for future elections.⁶³ A citizen unaware of any deadline might make a trip to the county supervisor's office, and the supervisor would be obligated to register the citizen. So to a certain extent, supervisors already carry out pre-election routines and register new voters at the same time.

Finally, implementing full-scale mail registration would alleviate many of the problems that supervisors foresee in shortening the deadline. As previously mentioned, a comprehensive mail-registration system would more evenly distribute registration throughout the year, lessening the pre-election rush to register. This would

60. Glass, Squire, & Wolfinger, *supra* note 21, at 54; Rosenstone & Wolfinger, *supra* note 55, at 31.

61. Letter from Buddy Irby, Legis. Chairman of the Fla. St. Ass'n of Supervisors of Elections, Inc., to Robert Kerstein (Mar. 2, 1987).

62. Glass, Squire & Wolfinger, *supra* note 21, at 54.

63. FLA. STAT. § 98.051(3)(b) (1985).

give supervisors more time to attend to other pre-election duties. Certainly, then, there is no reason why a shorter deadline should pose problems for supervisors if adopted in concert with a comprehensive mail system.

3. *Election Day Registration*

The argument in favor of election-day registration is merely an extension of the argument for shorter deadlines. By allowing registration on or very near election day, when media-generated excitement is at its peak, more people will register and more people will vote.

Currently, three states permit election-day registration—Maine, Minnesota, and Wisconsin⁶⁴—and the relevant statistics for those states strongly suggest that the system is bringing more voters to the polls. In 1972, before election-day registration was implemented, Maine ranked twenty-first, Minnesota third, and Wisconsin was tied for twelfth among all states in voter turnout for the presidential election. In contrast, those states ranked second, first, and fifth respectively in the 1984 election.⁶⁵ Furthermore, a study of turnout in congressional elections also indicates the effectiveness of election day registration.⁶⁶

Skeptics insist that election-day registration opens the door to voter fraud. For example, Richard Smolka writes that “[w]ith election day registration, the potential for vote fraud is great.”⁶⁷ However, Minnesota’s Secretary of State says that this just is not so. “I know of only two indictments [for voter fraud] in nine years. Secretaries of State in the two other states that use same-day registration give the unanimous opinion that voter fraud has not been a problem with election-day registrants. Maine has had only two convictions in ten years.”⁶⁸

Another often-heard criticism of election-day registration is that it leads to confusion in the polling place. This criticism has some merit, as both Minnesota and Wisconsin experienced administra-

64. **Maine:** ME. REV. STAT. ANN. tit. 21-A, § 122(4) (Supp. 1987); **Minnesota:** MINN. STAT. ANN. § 201.061.3 (West Supp. 1987); **Wisconsin:** WIS. STAT. ANN. § 6.55(2) (West 1986).

65. NON-VOTER STUDY, *supra* note 1 (graph showing the total vote in the general elections for president).

66. Zinser & Dawson, *Encouraging Voter Participation*, in POLITICAL FINANCE 230, 230-31 (H. Alexander ed. 1979).

67. R. SMOLKA, *supra* note 5, at 66.

68. POLICY ALTERNATIVES, *supra* note 42, at 8-9.

tive problems with the system during its debut. Long lines of frustrated voters appeared, many of them ignorant of where they should go or what they should do to register properly. Difficulties arose in checking identification and verifying residences, and there were shortages of registration forms and ballots.⁶⁹

There is, however, no substitute for experience. Both of these states learned from their early mistakes and corrected them in successive years. Of course, one of the major benefits accruing to any state contemplating election-day registration now is that it can learn from the other states' mistakes. The trail, so to speak, has already been blazed.

Florida should experiment with election-day registration. This clearly brings increases in registration and voting rates. However, the possibility of fraud must be faced. Therefore, several counties should be chosen to try this technique, and the process should be closely monitored. Election-day registration should be used for at least three elections in each of the counties so the process can be modified if problems arise. If it proves successful in increasing registration and is not shown to increase corruption, election-day registration should be expanded.

4. *Agency-Based Registration*

Agency-based registration first emerged as a comprehensive registration technique in the spring of 1983. Experience is already proving it an attractive and innovative registration vehicle. The idea behind the system is quite simple yet ingenious: make registration possible at all government-operated offices or agencies with which the public has frequent and routine contact. Under this system, people could register at places such as libraries, driver's license bureaus, tax offices, unemployment offices, and public health centers.⁷⁰

Agency-based registration can potentially reach hundreds of thousands of people, an assertion supported by early results from states employing this technique. New York registered 10,000 voters through public agencies in two weeks, and Ohio registered 70,000 new voters in just six weeks.⁷¹

69. R. SMOLKA, *supra* note 5, at 66.

70. Piven & Cloward, *Prospects for Voter Registration Reform: A Report on the Experiences of the Human SERVE Campaign*, PS 582 (Summer 1985).

71. POLICY ALTERNATIVES, *supra* note 42, at 31.

Moreover, because many of the agencies deal with low-income groups and minorities through welfare, unemployment or other programs, the system will likely produce significant registration gains among these groups. This is good news for democracy in America since both low-income groups and minorities are currently underrepresented in the electorate.

Agency-based registration is cost-effective, too, because the only personnel necessary are the existing agency employees. These employees may do as little as place the registration forms in conspicuous locations, or as much as witness signatures (where required) and submit completed forms to election authorities. The system is flexible enough to fit any state's needs.

Currently, agency-based registration can be accomplished in at least two ways: by executive order of the governor or, of course, by legislation. So far, five states have used the former strategy⁷² while at least ten states, including Florida, and the District of Columbia have passed authorizing legislation.⁷³ Although Florida's legislators have recognized the merits of agency-based registration, it has not been widely implemented.⁷⁴

Florida's governor and department heads should take steps to implement the law already on the books. Current law permits registration at any state, county, or municipal agency upon the approval of the county supervisor of elections.⁷⁵ Both mail-order registration forms and personal registration opportunities should be available at these agencies.

72. Piven & Cloward, *supra* note 70, at 585-87.

73. **Arizona:** ARIZ. REV. STAT. ANN. § 16-112 (Supp. 1986); **District of Columbia:** D.C. CODE ANN. § 1-1311(d) (1987); **Florida:** FLA. STAT. § 98.051(1)(b) (1985); **Georgia:** GA. CODE ANN. § 21-2-218(b) (1987); **Maryland:** MD. ELEC. CODE ANN. §§ 3-1(b), 3-2(c) (1957 & Supp. 1985); **Michigan:** MICH. COMP. LAWS ANN. § 168.500a.(1) (West Supp. 1987); **North Carolina:** N.C. GEN. STAT. § 163-80 (1982); **Ohio:** OHIO REV. CODE ANN. § 3503.10 (Anderson Supp. 1986); **Rhode Island:** R.I. GEN. LAWS § 17-9-5 (1981); **Washington:** WASH. REV. CODE ANN. § 29.07.025 (Supp. 1987); **Wyoming:** WYO. STAT. § 22-3-104 (1987). *See also* POLICY ALTERNATIVES, *supra* note 42, at 31.

74. Interview with Joan Brock, Pinellas County Election Services Coordinator (Mar. 26, 1987), and interview with Ivy Korman, Dade County Outreach Coordinator for Voter Registration (Mar. 26, 1987). Dade and Pinellas Counties both have active citizen registration programs, with over 600 and 700 registration facilities, respectively. However, in both cases outreach activity has been going on for a number of years and does not seem to have been affected by the state legislation.

75. FLA. STAT. § 98.051(1)(b) (1985).

5. *Statewide Registration Form*

Another administrative tool which could improve registration is a statewide registration form. Statewide forms could be distributed at large public events that draw citizens from diverse counties. They could also be strategically placed in post offices and other public facilities so that citizens planning intrastate moves could pick them up when taking care of other pre-move routines such as arranging for mail forwarding. Because the same form would be accepted by all counties, a registrant could simply submit a completed form to the elections office in his county of residence, present or future. While this practice might pose problems under Florida's current system, picking up a form in one county and turning it in to another would be perfectly appropriate if all counties were to accept the same form. A statewide form would be especially effective if adopted with a comprehensive mail registration system in which forms could be picked up in one county and mailed for registration in another.

6. *Centralized Register*

For most states, the biggest administrative problem in the field of voter registration is the maintenance of accurate, up-to-date registration lists. County election officials must be alert to deaths or changes of address and must monitor other contingencies if they hope to maintain accurate rolls. To alleviate the difficulties of performing this task exclusively on a local level, several states have implemented a central, computerized register.⁷⁶ This technique enables a state to cross-check doubtful registrations with statewide property tax rolls and driver's license records.⁷⁷ In fact, many states with central registers require certain public agencies to make

76. **California:** CAL. ELEC. CODE § 607 (West Supp. 1987); **District of Columbia:** D.C. CODE ANN. § 1-1311(h)(2)(A) (1987); **Hawaii:** HAW. REV. STAT. § 11-14 (1985); **Louisiana:** LA. REV. STAT. ANN. § 18:31 (West Supp. 1987); **Michigan:** MICH. COMP. LAWS ANN. § 600.1375 (West Supp. 1987); **Minnesota:** MINN. STAT. ANN. § 201.221 (West Supp. 1987); **New York:** N.Y. ELEC. LAW § 5-500 (McKinney 1976 & Supp. 1987) (central file registration record. *But see id.* § 5-504 (allowing for optional discontinuation of central file)); **Oklahoma:** OKLA. STAT. ANN. tit. 26, § 4-115 (West Supp. 1987); **Pennsylvania:** PA. STAT. ANN. tit. 25, § 951-24 (Purdon Supp. 1987); **Virginia:** VA. CODE ANN. §§ 24.1-23 to -28 (1985) (centralized but not specifically computerized); **Wyoming:** WYO. STAT. § 22-2-113 (1987). See E. Callen, Developing a Statewide Voter Registration System in the State of Florida (Apr. 1987) (report submitted to Fla. St. Univ. Dep't of Pub. Admin.); ARTHUR YOUNG & CO., STATEWIDE REGISTRATION SYSTEMS 1 (Dec. 1, 1977); WEEMS & ASSOC., STATEWIDE REGISTRATION SYSTEMS 2 (Dec. 1, 1977).

77. POLICY ALTERNATIVES, *supra* note 42, at 75.

monthly reports of deaths, felony convictions, name changes, and address changes to state election authorities in order to facilitate timely entries in the computer.⁷⁸

So far, the results of central, computerized registration are encouraging. Increased efficiency of the system enabled county offices in South Carolina to stay open longer for registration and resulted in the highest number of registrations for a single year in the history of the state.⁷⁹ In addition, Rhode Island's Secretary of State, Susan Farmer, says centralized registration has improved the accuracy of the state's voter registration records. Consequently, interaction between political candidates and the public has become easier and more efficient.⁸⁰

Having a statewide computerized list of all registrants would also help to decrease the possibility of fraud. As noted above, this system enables states to cross-check registration with drivers' licenses and other records. In addition, a central register would help accomplish other desirable goals. For example, those who desire lists of registered voters in many locations could get them from the Division of Elections as opposed to having to go to each election supervisor.

Beyond that, having a statewide register would make implementing additional changes in registration procedures much simpler. For instance, the United States Congress is considering a bill that would enable states to use the postal service to help register recent movers.⁸¹ A copy of the change-of-address form that almost all movers complete would be sent to the chief election official of the state where the move originated.⁸² The state official could then transfer the registration of persons who were already registered within the state. If the intrastate movers were unregistered, a mail-registration form could be sent to their new address.

Because recent movers are often slow to register at their new locations,⁸³ it is important for Florida to participate in this system if Congress authorizes it. Adopting a centralized register would enable the state to implement the system more easily by providing a clearing house for all of the post office registration changes.

78. *Id.*

79. *Id.*

80. *Id.* at 75-76.

81. H.R. 1668, 99th Cong., 1st Sess. (1985).

82. *Id.*

83. Squire, Wolfinger, & Glass, *Residential Mobility and Voter Turnout*, 81 AM. POL. SCI. REV. 45 (1987).

7. *Burden on Citizens*

As previously mentioned, all American states place the burden of registering on the individual citizen. This feature is virtually unique to the United States among all Western democracies, and is significant because of its impact on voter turnout.⁸⁴ In almost all other countries, the initiative for registering citizens rests with the government. It is either done automatically through the use of government records of citizens' names and addresses, or by contacting every citizen of voting age through a comprehensive canvass.⁸⁵

Our dominant concern with registration laws is the impact they have on voter turnout. Therefore, the obvious question is: What effect does the do-it-yourself policy of voter registration in the United States have on registration levels and voter turnout? According to statistics for national elections in twenty-one Western democracies, the United States, with a 52.6% turnout, ranks twentieth in the number of votes cast as a percentage of the voting age population.⁸⁶ In contrast, among these countries, and Iceland, Luxembourg, and Israel, the United States ranks eleventh in voting as a percentage of registered voters with an 86.8% mark.⁸⁷

These statistics indicate that American registration systems hinder voter turnout as compared with European systems. Indeed, researchers have reached exactly this conclusion, stating, "[W]e are confident that establishing a European-type registration system would increase voter turnout by substantially more than nine percent."⁸⁸

The Model Election System proposed by the National Municipal League advocates state-conducted canvassing of all households as is presently done in Canada. According to the League, this is the reform most likely to yield complete, accurate registration rolls.⁸⁹

84. Glass, Squire, & Wolfinger, *supra* note 21, at 52. See Powell, *American Voter Turnout in Comparative Perspective*, 80 AM. POL. SCI. REV. 17 (1986).

85. For analyses of registration systems and voter turnout in Europe and the United States, see Burnham, *supra* note 3, at 35-73; and Powell, *supra* note 84 (1986).

86. Glass, Squire, & Wolfinger, *supra* note 21, at 50. The data are for the most recent elections as of 1981. Only Switzerland ranks below the United States. *Id.* The primary reason for the disparity between this figure and the statement later in the text that the turnout among registered voters was 72.6% in the 1984 presidential election is that the committee for the Study of the American Electorate, the source for the 72.6% figure, calculated its data from state records, not citizen surveys. See *infra* note 164.

87. *Id.* at 52. The authors admit that the 86.8% figure is probably overstated since it relies upon survey data. *Id.*

88. Rosenstone & Wolfinger, *supra* note 55, at 41.

89. NATIONAL MUNICIPAL LEAGUE, A MODEL ELECTION SYSTEM 23-36 (1973).

The League's system of canvassing calls for statewide, door-to-door visitation by trained canvassers every one or two years, similar to the Canadian practice. The canvassers would remove from the rolls voters who are no longer residing at their stipulated addresses and who had not re-registered. In addition, canvassers would attempt to register all those not presently on the rolls.

This system would generally permit household members who are home at the time of the canvass to register absent members. However, the League notes that such a nonpersonal registration method might cause problems in states requiring signature verification at the polls. Because absent registrants would have no signatures on file, there would be no way to match their signatures at the polls. Verification would also be a problem if such an individual applied for an absentee ballot.

The League suggests that because many states do not require signature comparisons, the practice may not be necessary to detect or deter fraud. Thus, the League concludes that nonpersonal registration should be allowed unless a state carefully determines that a signature test "is necessary to guarantee the integrity of the electoral process."⁹⁰

Even if a state determines that signature comparisons are necessary, the League argues that the practice can be incorporated into a nonpersonal registration technique. For instance, a canvasser could leave a postcard for an absent registrant with instructions for the registrant to sign and return it. Alternatively, the absent registrant could sign the registration book at the polls on election day. Although no signature comparison would be possible at that election, comparisons could be made at all future elections.⁹¹

Florida's election code should be modified to allow canvassing. Studies show that voter registration drives have been successful among groups with low registration rates.⁹² Canvassing is a further step in this direction. Even with this kind of potential, however, the idea that individual citizens bear the burden of registering is so thoroughly entrenched in American political thought that it is unlikely that any state, including Florida, will try a comprehensive, government-initiated system of registration in the near future. Nevertheless, the European and National Municipal League models serve to remind us of the inadequacies of our own system so we

90. *Id.* at 27.

91. *Id.*

92. Cain & McCue, *The Efficacy of Registration Drives*, 47 J. POL. 1221 (1985).

can continue to strive to achieve maximum democratic participation.

8. *Purging Registered Voters*

Another troublesome Florida election provision is the purging statute which mandates temporary removal of a voter from the registration list if the voter fails to vote within a two-year period and does not return a status check form within thirty days. If the voter does not notify the election supervisor in writing within three years after being temporarily removed from the list that his or her status has not changed, the voter's registration is permanently cancelled.⁹³ Presumably, this law is aimed at facilitating accurate, up-to-date registration rolls. But the provision stumbles over one of its own premises—namely that a voter who is inactive for two years has died or moved from the jurisdiction. On the contrary, many voters *choose* to vote only in presidential elections, which are held once every four years. Forcing these well-intentioned voters to jump through extra hoops just to vote may result in their not voting at all.⁹⁴ This temporary/permanent purge system in the name of eliminating so-called “dead wood” is like throwing the proverbial baby out with the bath water.

We need accurate registration rolls. But by increasing the period of voter inactivity from two to four years before any steps are taken to cancel registration, we can better achieve that goal and prevent the disfranchisement of a significant portion of our electorate.

II. VOTING PROCEDURE

Changes in registration procedures clearly affect registration rates and, ultimately, voter turnout.⁹⁵ In addition, factors associated with the voting process itself may affect turnout.

93. FLA. STAT. § 98.081 (1985).

94. The fact that voters may give written notification of no status change at the polls on election day, does not soften the harsh results of a two-year temporary purge/five-year permanent purge period. Many voters simply do not have, or will not take, the time to fill out the forms, especially if the lines at the polls are long. “Furthermore, in some instances, would-be voters are told by precinct workers that they must go to the location where the list of temporarily purged citizens is kept in order to complete the forms. They then must return to their precinct to vote.” Telephone conversation with Sarah Bradshaw, H.R. Comm. on Ethics and Elections (Nov. 23, 1987). Perhaps some registrants will think, with good reason, that they have already expended enough effort by registering in the first place.

95. Certainly, however, the relationship is not perfect. One who is mobilized to register and vote in one election may choose not to vote in the next for a variety of reasons. See

A. Voting Hours

The hours during which polling places remain open may influence voter turnout. Florida law mandates that the polls remain open for twelve hours, from 7:00 a.m. through 7:00 p.m., on election day in all voting places throughout the state.⁹⁶ These hours should be increased for three reasons.

First, Florida's hours compare unfavorably with those of most other states that have fixed hours. Florida and several other states mandate that their polls remain open for twelve hours,⁹⁷ but at least twenty states plus the District of Columbia mandate thirteen hours.⁹⁸ At least three states call for fourteen hours,⁹⁹ and one, New York, keeps its polls open for fifteen hours.¹⁰⁰ On the other hand, only a few states call for fixed polling times as short as eleven or eleven and one half hours.¹⁰¹ A handful of states have

Vedlitz, *Voter Registration Drives and Black Voting in the South*, 47 J. POL. 643, 643-51 (1985); Caldeira, Patterson, & Markko, *The Mobilization of Voters in Congressional Elections*, 47 J. POL. 490, 490-508 (1985).

96. FLA. STAT. § 100.011(1) (1985).

97. **Alaska:** ALASKA STAT. § 15.15.080 (Supp. 1987); **Colorado:** COLO. REV. STAT. § 1-7-101 (1980); **Florida:** FLA. STAT. § 100.011 (1985); **Georgia:** GA. CODE ANN. § 21-2-403 (1987); **Idaho:** IDAHO CODE § 34-1101 (1981); **Illinois:** ILL. ANN. STAT. ch. 46, para. 17-1 (Smith-Hurd 1975); **Indiana:** IND. CODE ANN. § 3-11-8-8 (Burns Supp. 1987); **Kansas:** KAN. STAT. ANN. § 25-106 (1986); **Kentucky:** KY. REV. STAT. ANN. 118.035 (Michie/Bobbs-Merrill 1982 & Supp. 1986); **Mississippi:** MISS. CODE ANN. § 23-15-541 (Supp. 1987); **Nebraska:** NEB. REV. STAT. § 32-445.01 (1984); **Nevada:** NEV. REV. STAT. ANN. § 293.273 (Michie 1986); **Oklahoma:** OKLA. STAT. ANN. tit. 26, § 7-104 (West 1976); **Oregon:** OR. REV. STAT. ANN. § 254.325(1) (Butterworth 1986); **South Carolina:** S.C. CODE ANN. § 7-13-60 (Law. Co-op. Supp. 1986); **Texas:** TEX. ELEC. CODE ANN. § 41.031 (Vernon 1986).

98. **Arizona:** ARIZ. REV. STAT. ANN. § 16-565 (1984 & Supp. 1986); **California:** CAL. ELEC. CODE § 14206 (West 1977); **Delaware:** DEL. CODE ANN. tit. 15, §§ 4931, 4947 (1981); **District of Columbia:** D.C. CODE ANN. § 1-1314(b) (1987); **Maryland:** MD. ANN. CODE art. 33, § 15-2 (1957); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 53, § 43 (West Supp. 1987) (at least 13 hours); **Michigan:** MICH. COMP. LAWS ANN. § 168.720 (West 1967); **Minnesota:** MINN. STAT. ANN. § 204C.05.1 (West Supp. 1987); **Missouri:** MO. ANN. STAT. § 115.407 (Vernon 1980); **New Jersey:** N.J. STAT. ANN. § 19:15-2 (West 1964); **New Mexico:** N.M. STAT. ANN. § 1-12-1 (1985); **North Carolina:** N.C. GEN. STAT. § 163-2 (1982); **Ohio:** OHIO REV. CODE ANN. § 3501.32 (Anderson Supp. 1986); **Pennsylvania:** PA. STAT. ANN. tit. 25, § 3045 (Purdon 1963); **Utah:** UTAH CODE ANN. § 20-1-13 (1984); **Virginia:** VA. CODE ANN. § 24.1-98 (1985); **Washington:** WASH. REV. CODE ANN. § 29.13.080 (Supp. 1987); **West Virginia:** W. VA. CODE § 3-1-31 (1987).

99. **Connecticut:** CONN. GEN. STAT. ANN. § 9-174 (West Supp. 1987) (but only eight hours for special elections); **Iowa:** IOWA CODE ANN. § 49.73 (West Supp. 1987) (state primary and general elections); **Louisiana:** LA. REV. STAT. ANN. § 18:541 (West 1979).

100. N.Y. ELEC. LAW § 8-100 (McKinney Supp. 1987).

101. **Arkansas:** ARK. STAT. ANN. § 3-701 (Supp. 1983) (11½ hours); **Hawaii:** HAW. REV. STAT. § 11-131 (1985) (11 hours); **Wyoming:** WYO. STAT. § 22-13-101 (1977).

variable hours which may depend on the size of the town or voting district.¹⁰²

Second, there is some statistical evidence that increasing the number of hours can increase turnout. Wolfinger and Rosenstone suggest that keeping the polls open nationwide for fourteen hours increases the probability of an individual voting from about 1% to 3%.¹⁰³ These figures are merely suggestive, but they do indicate that polling hours can affect turnout.

Third, the rapid population growth in many of Florida's urban areas is aggravating traffic problems and necessitating long commutes for many people. Because citizens must vote near their residences (unless they vote absentee), those who commute relatively long distances to work may have a difficult time getting to the polls. Allowing the polls to stay open until at least 8:00 p.m. may enable some people to vote who otherwise might not. Undoubtedly, it will make it more convenient for some to vote. As with registration, election laws should ease any unnecessary burdens on voting.

B. Voting Days

Florida's general and primary elections are held on Tuesdays.¹⁰⁴ This is typical of most states.¹⁰⁵ Exceptions include Louisiana and

102. **Maine:** ME. REV. STAT. ANN. tit. 21-A, § 626 (Supp. 1986) (11 to 14 hours); **Rhode Island:** R.I. GEN. LAWS §§ 17-18-10, -11 (1981 & Supp. 1986) (9 to 15 hours); **Tennessee:** TENN. CODE ANN. § 2-3-201 (1985) (10 to 13 hours); **Vermont:** VT. STAT. ANN. tit. 17, § 2561 (1982) (9 to 13 hours); **Wisconsin:** WIS. STAT. ANN. § 6.78 (West 1986) (13 hours in big cities; 11 in small towns).

103. Rosenstone & Wolfinger, *supra* note 55, at 31-33.

104. FLA. STAT. §§ 100.031, .061, .091(1) (1985).

105. **Alabama:** ALA. CODE §§ 17-16-6, 17-2-3 (1975); **Alaska:** ALASKA STAT. § 15.15.020 (1982); **Arizona:** ARIZ. REV. STAT. ANN. §§ 16-201, 16-211 (1984); **Arkansas:** ARK. STAT. ANN. § 3-602 (1976); **California:** CAL. ELEC. CODE § 2500 (West 1976); **Colorado:** COLO. REV. STAT. §§ 1-1-104(12), -104(23) (1980); **Connecticut:** CONN. CONST. art. 5, § 1; **Delaware:** DEL. CONST. art. 5, § 1; **District of Columbia:** D.C. CODE ANN. § 1-1314(a) (1987); **Florida:** FLA. STAT. § 100.31, .61, .91 (1985); **Georgia:** GA. CODE ANN. §§ 21-2-9, 21-2-150 (1987); **Hawaii:** HAW. CONST. art. II, § 8 (1985); **Idaho:** IDAHO CODE § 34-601 (1980); **Illinois:** ILL. ANN. STAT. ch. 46, para. 2A-1.1 (Smith-Hurd Supp. 1987); **Indiana:** IND. CODE ANN. § 3-5-1-2 (Burns Supp. 1987); **Iowa:** IOWA CODE ANN. § 39.1 (West Supp. 1987); **Kansas:** KAN. STAT. ANN. § 25-1115 (Supp. 1986); **Kentucky:** KY. CONST. § 148; **Maine:** ME. CONST. art. 2, § 4; **Maryland:** MD. CONST. art. XV, § 7; **Massachusetts:** MASS. GEN. LAWS ANN. ch. 53, § 28 (West Supp. 1987); **Michigan:** MICH. CONST. art. 2, § 5; **Minnesota:** MINN. CONST. art. 7, § 7; MINN. STAT. ANN. § 204D.03 (West Supp. 1987); **Mississippi:** MISS. CONST. art. 4, § 102; MISS. CODE ANN. § 23-5-91 (1972); *Id.* art. 12, § 252; **Missouri:** MO. ANN. STAT. § 115.121 (Vernon 1979); **Montana:** MONT. CODE ANN. § 13-1-104 (1987); **Nebraska:** NEB. REV. STAT. § 32-601 (1984); **Nevada:** NEV. REV. STAT. ANN. § 293.060, 293.175 (Michie 1986); **New Hampshire:** N.H. REV. STAT. ANN. § 653:7-9 (1986); **New Jersey:** N.J. STAT. ANN. §§ 19:1-1, :2-1, :23-40 (West Supp. 1987); **New Mexico:** N.M.

Texas, which hold some of their elections on Saturday.¹⁰⁶ Florida legislators may want to consider Saturday elections for state offices. The consequences of Saturday elections on turnout are unknown. Apparently there is no analysis indicating whether Saturday voting has increased turnout in Louisiana or Texas. Still, a Texas opinion poll indicates that the voters generally approve of Saturday elections. The poll found that 59% of the voters and 67.5% of the registered nonvoters favored holding all state and local elections on Saturday. Only 22.1% of the voters and 16.6% of the registered nonvoters were opposed to the reform.¹⁰⁷

A potential disadvantage of this change is that on occasion people will be asked to vote twice in the same week—in a federal election on Tuesday and in an election for state offices and issues on Saturday. Turnout, conceivably, might even decrease as people tire of voting. Another potential problem is that administrative costs would increase.

Local elections seem a likely forum for experimentation. These elections usually are held at different times from state and federal elections, and voter turnout is generally low, making the risks of experimentation low. Some cities or counties might want to experiment with Saturday elections, or even elections extended through the entire weekend. The polls could remain open for thirteen hours on Saturday and on Sunday from 12:00 to 8:00 p.m. This might increase turnout, and is certainly worth a try.

C. Absentee Ballots

Absentee ballot procedures can affect voter turnout. There are always some voters who are unable to get to the polls on election day because they are out of town, physically handicapped, or oth-

CONST. art. XX, § 6; **New York:** N.Y. ELEC. LAW § 8-100 (McKinney 1976); **North Carolina:** N.C. GEN. STAT. § 163-1 (Supp. 1985); **North Dakota:** N.D. CENT. CODE § 16.1-13-01 (1981); **Ohio:** OHIO REV. CODE ANN. § 3501.01 (Anderson Supp. 1986); **Oklahoma:** OKLA. STAT. ANN. tit. 26, §§ 1-101, 102 (West Supp. 1987); **Oregon:** OR. CONST. art. II, § 14; OR. REV. STAT. ANN. § 254.056 (Butterworth 1986); **Pennsylvania:** PA. STAT. ANN. tit. 25, § 2751-52 (Purdon Supp. 1987); **Rhode Island:** R.I. GEN. LAWS § 17-18-5 (1981); **South Carolina:** S.C. CODE ANN. § 7-13-40 (Law. Co-op. Supp. 1986); **South Dakota:** S.D. CODIFIED LAWS ANN. § 12-2-1, -2 (1982); **Texas:** TEX. ELEC. CODE ANN. § 41.001 (Vernon 1986); **Utah:** UTAH CODE ANN. § 20-1-1 (1984); **Vermont:** VT. STAT. ANN. tit. 17, §§ 2103, 2351 (1982); **Virginia:** VA. CODE ANN. § 24.1-1(5)(a) (1985); **Washington:** WASH. REV. CODE ANN. § 29.13.010 (Supp. 1987); **West Virginia:** W. VA. CODE § 3-1-31 (1986); **Wisconsin:** WIS. STAT. ANN. § 10.78(6)(a) (West 1985); **Wyoming:** WYO. STAT. § 22-2-104 (1987).

106. LA. REV. STAT. ANN. § 18:402 (1978); TEX. ELEC. CODE ANN. §§ 41.001, .002 (1986).

107. SEC. OF STATE, STUDY OF THE FIFTY STATES, EXECUTIVE SUMMARY 38 (Tex., Dec. 1982).

erwise indisposed.¹⁰⁸ Florida's provisions for absentee ballots are generally good ones, providing ample opportunity for citizens to vote by this mechanism. In fact, Florida's absentee voting provisions meet almost all of the standards enumerated in the National Municipal League's Model Election System.

The League's model system enumerates eight conditions that an absentee ballot system should fulfill. Florida's falls short on only two of these conditions.

1. "*Absentee voting provisions should apply to both primary and general elections.*"¹⁰⁹ Florida's code meets this criterion by providing absentee ballots for primaries, second primaries, and general elections.¹¹⁰

2. "*Absentee voting should be available to any qualified voter who expects to be away from his county or city on election day or who is ill or physically disabled.*"¹¹¹ Florida's code falls short of meeting this condition. It requires absence from the county, not just the city, in order to vote absentee.¹¹²

3. "*There should be no requirement for notarization of the absentee ballot application or the absentee ballot.*"¹¹³ Florida's code complies by giving people who use absentee ballots the option of having their signatures witnessed either by a notary or by two people who are at least eighteen years old.¹¹⁴

4. "*No special application form should be required to obtain an absentee ballot.*"¹¹⁵ Florida complies. Voters may request an absentee ballot from the supervisor or deputy supervisor of elections by mail, telephone, or in person.¹¹⁶

5. "*Applications for absentee ballots should be accepted up to seven days before an election and absentee ballots should be counted if received by the time the polls close.*"¹¹⁷ Florida clearly complies with both aspects of this recommendation. There is no time requirement on absentee ballot requests from within the country. The only time restriction on requests from overseas elec-

108. See Milbraith, *Political Participation in the States*, in *POLITICS IN THE AMERICAN STATES* 25, 49 (H. Jacob & K. Vines ed. 1965).

109. NATIONAL MUN. LEAGUE, *supra* note 89, at 38 (emphasis added).

110. FLA. STAT. § 101.62(1), (4) (1985).

111. NATIONAL MUN. LEAGUE, *supra* note 89, at 38 (emphasis added).

112. FLA. STAT. §§ 97.021(1), 101.62 (1985).

113. NATIONAL MUN. LEAGUE, *supra* note 89, at 39 (emphasis added).

114. FLA. STAT. § 101.64(1) (1985).

115. NATIONAL MUN. LEAGUE, *supra* note 89, at 39 (emphasis added).

116. FLA. STAT. § 101.62(1) (1985).

117. NATIONAL MUN. LEAGUE, *supra* note 89, at 39 (emphasis added).

tors requires that such requests be received by the Friday (four days) before the election.¹¹⁸ Absentee ballots are counted if they are received by the time the polls close on election day.¹¹⁹

6. *"To preserve the secrecy of the ballot and to prevent fraud, absentee ballots should be returned to and counted at the central election office which issued them rather than distributed to each precinct."*¹²⁰ Florida's system meets this recommendation. Absentee ballots are sent to the county supervisor's office and are counted by the county canvassing board.¹²¹

7. *"Every state should adopt all recommendations made in the Federal Voting Assistance Act of 1955 as amended."*¹²² This act proposes that all members of the armed forces and their families residing overseas, as well as other citizens temporarily living abroad, be allowed to submit the federal postcard application as both an application for an absentee ballot and, if the person is not registered, as an application for registration.¹²³ A majority of states and the District of Columbia have adopted this recommendation for members of the armed forces.¹²⁴ However, only a minority of

118. FLA. STAT. § 101.62(2) (1985).

119. *Id.* § 101.67(2). In fact, Florida was required by federal district court to adopt an administrative rule specifying the following absentee voting rights for persons overseas: absentee ballots will be mailed to overseas electors at least 35 days prior to the first primary; absentee ballots will be mailed to overseas electors at least 35 days prior to the second primary; with respect to the presidential preference primary and the general election, any absentee ballot cast for a federal office by an overseas elector will be counted if received no later than ten days following the election. FLA. ADMIN. CODE R. 1C-7.013 (1986). The rationale for this requirement was that because our two primary and general elections are so close together, an overseas elector might have inadequate time to request and submit absentee ballots by election day.

120. NATIONAL MUN. LEAGUE, *supra* note 89, at 40 (emphasis added).

121. FLA. STAT. § 101.68 (1985).

122. NATIONAL MUN. LEAGUE, *supra* note 89, at 40 (emphasis added).

123. 42 U.S.C. § 1973dd-2 (1981).

124. **Arizona:** ARIZ. REV. STAT. ANN. § 16-543 (1984); **Arkansas:** ARK. CONST. amend. 51, § 9; **California:** CAL. ELEC. CODE § 1200 (West Supp. 1987); **Colorado:** COLO. REV. STAT. § 1-2-207 (1980); **Connecticut:** CONN. GEN. STAT. ANN. §§ 9-26, 9-153e (West Supp. 1987); **Delaware:** DEL. CODE ANN. tit. 15, § 5524 (1981); **District of Columbia:** D.C. CODE ANN. § 1-1306(10), (13) (1987); **Florida:** FLA. STAT. § 97.063 (1985); **Georgia:** GA. CODE ANN. § 21-2-230(e) (1987); **Hawaii:** HAW. REV. STAT. § 11-16 (1985); **Idaho:** IDAHO CODE § 34-1003(2) (Supp. 1987); **Illinois:** ILL. ANN. STAT. ch. 46, para. 20-2 (Smith-Hurd Supp. 1987); **Kansas:** KAN. STAT. ANN. § 25-1214, 1215 (1964); **Kentucky:** KY. REV. STAT. ANN. § 117.085(1)(b) (Michie/Bobbs-Merrill Supp. 1986); **Maine:** ME. REV. STAT. ANN. tit. 21-A, § 777 (Supp. 1986); **Minnesota:** MINN. STAT. ANN. § 203B.16 (West Supp. 1987); **Mississippi:** MISS. CODE ANN. §§ 23-15-673(1)(A), 23-15-677 (Supp. 1987); **Missouri:** MO. ANN. STAT. § 115.277(2) (Vernon Supp. 1987); **Montana:** MONT. CODE ANN. § 13-2-214 (1987); **New Mexico:** N.M. STAT. ANN. § 1-6-5(d) (1978); **New York:** N.Y. ELEC. LAW § 8-400 (McKinney 1978); **North Carolina:** N.C. GEN. STAT. § 63-245 (1982); **Ohio:** OHIO REV. CODE ANN. § 35.1.02 (Anderson Supp. 1986) (accepts any written request which includes

states and the District of Columbia have adopted the procedure for all citizens living abroad.¹²⁵

Florida permits members of the armed forces and their families living overseas to use the federal postcard to request a registration form. Only United States citizens who are permanent residents of Florida living overseas, however, may also use the federal postcard as an application for registration. Citizens who are permanent Florida residents living temporarily overseas must make a written request stating that registering in person would cause hardship.¹²⁶ These registration restrictions do not seem to apply when a federal postcard is used to request an absentee ballot.¹²⁷

8. *"American citizens who reside outside the territorial limits of the United States and are otherwise qualified to vote should be able to register and vote at least in Federal Elections where they last resided in the U.S."*¹²⁸ A number of Americans live abroad who do not serve in the armed forces or work as federal employees. Many of these overseas Americans are effectively disfranchised because states often define residency as maintaining a home or physical presence within the state. The Model Election System suggests that each state define residence to include qualified voters living

minimum information); **Oregon:** OR. REV. STAT. ANN. § 253.550 (Butterworth 1986); **Pennsylvania:** PA. STAT. ANN. tit. 25, § 3146.2(a) (Purdon Supp. 1987); **Rhode Island:** R.I. GEN. LAWS § 20-9.1 (Supp. 1986); **South Carolina:** S.C. CODE ANN. § 7-15-340 (Law. Co-op. Supp. 1986); **Texas:** TEX. ELEC. CODE ANN. ch. 101.001 (Vernon 1986); **Virginia:** VA. CODE ANN. § 24.1-227(2), 228.1 (1985); **Wyoming:** WYO. STAT. § 22-3-117(b) (1987).

125. **Arizona:** ARIZ. REV. STAT. ANN. § 16-128 (1984); **Arkansas:** ARK. CONST. amend. 51, § 9; **California:** CAL. ELEC. CODE § 1200 (West Supp. 1987); **Colorado:** COLO. REV. STAT. § 1-2-207 (1980); **Delaware:** DEL. CODE ANN. tit. 15, § 5524 (Supp. 1986); **District of Columbia:** D.C. CODE ANN. 1-1306(10), (13) (1987); **Florida:** FLA. STAT. § 97.063 (1985) **Georgia:** GA. CODE ANN. § 21-2-230(e) (1987); **Hawaii:** HAW. REV. STAT. § 11-16 (1985); **Illinois:** ILL. ANN. STAT. ch. 46, para. 20-21 (Smith-Hurd Supp. 1987); **Kansas:** KAN. STAT. ANN. § 25-1214, -1215, -1216 (1964); **Minnesota:** MINN. STAT. ANN. § 203B.16 (West Supp. 1987); **Mississippi:** MISS. CODE ANN. § 23-15-673(1)(e), 23-15-677 (Supp. 1987); **Montana:** MONT. CODE ANN. § 13-2-212 (1987); **New Mexico:** N.M. STAT. ANN. § 1-6-5(d) (1978); **Oregon:** OR. REV. STAT. ANN. § 253.550 (Butterworth 1986); **South Carolina:** S.C. CODE ANN. § 7-15-340 (Law. Co-op. Supp. 1986); **Texas:** TEX. ELEC. CODE ANN. ch. 101.001 (Vernon 1986); **Virginia:** VA. CODE ANN. §§ 24.1-228.1(d), 24.1-227(2) (1985); **Wisconsin:** WIS. STAT. ANN. § 6.24 (West 1986); **Wyoming:** WYO. STAT. § 22-3-117(b)(iii) (1987).

126. FLA. STAT. § 97.063 (1985).

127. FLA. STAT. § 101.692 (1985). The statute provides that if the applicant has never registered in the county and is eligible to register absentee under section 97.063(1), the supervisor will send an absentee registration form. *Id.* Section 97.063(1) does not include the restrictions found in section 97.063(2). Thus, the face of the statute is unclear as to whether the restrictions of section 97.063(2) regarding use of the federal postcard for absentee registration should also apply when the federal postcard is used for an absentee ballot application under section 101.692.

128. NATIONAL MUN. LEAGUE, *supra* note 89, at 41 (emphasis added).

overseas.¹²⁹ Florida's code seems to comply with this recommendation by permitting those who intend to remain Florida residents to vote in state and federal elections.¹³⁰

In summary, Florida's absentee ballot provisions are generally good. However, certain changes are desirable. The statutes should clarify who can use the federal postcard as an application for a ballot. They should also clarify whether restrictions on registration are removed when the postcard is used to request an absentee ballot.

Another important modification would be to permit citizens to vote absentee if they will be away from their city during polling hours, not just away from their county. Many residents who work within the county but outside their city would find it more convenient to vote absentee. Furthermore, the election code should be changed to allow those living in unincorporated areas of the county to vote absentee even if they will be in the county on election day. This is important because residents living in unincorporated suburbs in Florida's major metropolitan areas often commute long distances to work in other sections of the county.

III. CHALLENGING ELECTIONS

The ability to register and vote easily is crucial to the democratic process.¹³¹ Ideally, every step that accompanies or follows voting should proceed fairly and efficiently. Ultimately, votes are tabulated and the winners are declared. Not all elections, however, proceed smoothly and honestly. What if the machines break down? What if an election official tampers with the ballots? What if a candidate purchases votes? If the integrity of our democratic electoral system is to be maintained, election laws must establish sound procedures to deal with these scenarios. If not, people may be discouraged from voting because their votes become meaningless.

This realization struck home during primary elections held on September 2, 1986, in Leon County. For whatever reasons, the machines did not work right, and the votes of many people apparently were counted improperly. Other people stayed home after hearing about the problems which halted voting in many precincts. Despite

129. *Id.*

130. FLA. STAT. § 97.064(1) (1985).

131. *But see* N.D. CENT. CODE ch. 16.1-01 (1981) (no mention of registration requirement for state elections).

the disaster, "winners" were declared in each race. One "losing" candidate for the Leon County Commission filed suit.¹³² Although he eventually dropped his complaint, it is unclear what his remedy might have been.

This incident suggests that the Legislature should change the election challenge provisions of Florida's statutes. I will not propose comprehensive reform here because of the legal complexities involved. However, the Legislature should consider the following issues.

A. *Florida's Current Challenge Statute*

Florida law distinguishes between contesting elections and protesting the returns, and between two types of election return protests. The first type of protest basically gives any candidate or elector the right to have the canvassing board, the group responsible for determining the results of the election, check the accuracy of the vote count.¹³³ This procedure is desirable and noncontroversial. It should remain in the statute.

The second method of protest goes well beyond challenging possible inaccuracies in the tabulation of votes. It allows any candidate or elector to protest the returns based on charges of fraud occurring either in the tabulation of ballots or in other practices related to the election.¹³⁴ All protests of this nature are made to a circuit judge in the county where the fraud is alleged to have occurred.¹³⁵ Normally, these protests must be presented to the judge within five days after the election.¹³⁶ If, however, the canvassing board has not adjourned by then, the protest will be considered timely until the board adjourns.¹³⁷ The significance of a protest is recognized by giving the protesting party the right to an immediate hearing after submitting a petition.¹³⁸

Judges have wide latitude in determining whether fraud actually occurred and in granting relief when fraud is established. The judge has statutory authority "to fashion such orders as he may deem necessary to insure that such allegation is investigated, ex-

132. No. 86-3104 (Fla. 2d Judicial Cir.).

133. FLA. STAT. § 102.166(1)(a)-(b) (1985).

134. *Id.* § 102.166(2).

135. *Id.* § 102.166(2). If fraud is alleged in more than one county, venue is proper in any county where the fraud is alleged. *Id.*

136. *Id.* § 102.166(1)(a).

137. *Id.* § 102.166(2)(a).

138. *Id.* § 102.166(2)(b).

amined, or checked; to prevent or correct such fraud; or to provide any relief appropriate under such circumstances."¹³⁹

Plaintiffs have up to ten days after the canvassing board adjourns to file an election contest in circuit court. Unlike the return protest statute, the election contest statute does not provide for an immediate hearing. Taxpayers can contest a referendum election, but only candidates who claim victory can contest a primary or general election.¹⁴⁰ Also, unlike return protests, the grounds for contesting an election are not confined to fraud. In fact, no specific grounds are enumerated. The statute merely provides that "the complaint shall set forth the grounds on which the contestant intends to establish his right to such office or set aside the result of the election on a submitted referendum."¹⁴¹

Finally, Florida's statutes specify remedies for successful contests, while leaving the remedy for protests to judicial discretion. Section 102.1682(1) specifies that an unsuccessful candidate who wins the contest gains the office at the expense of the "adverse party." In a successful referendum contest, the election is declared void.¹⁴²

No significant court decisions have construed the return protest statutes. However, the Florida Supreme Court has played a major role in interpreting the contest criteria. For example, it ruled in *Boardman v. Esteve*¹⁴³ that in addition to fraud, gross negligence and intentional wrongdoing are also valid grounds for contesting an election. And in *Bolden v. Potter*,¹⁴⁴ the court ruled that contrary to an earlier Florida District Court of Appeal decision,¹⁴⁵ the plaintiff did not have to prove conclusively that he would have won the election if the tainted ballots had not been counted. Instead, the supreme court reinstated the trial court's decision invalidating all absentee ballots because the plaintiff had made a clear showing of substantial fraud (vote buying). If not, the court reasoned, the public would lose confidence in the electoral process.¹⁴⁶

139. *Id.*

140. *Id.* § 102.168. *But see* *Bolden v. Potter*, 452 So. 2d 564 (Fla. 1984) (showing of substantial fraudulent practices sufficient even without a showing that the number of invalid votes would change election results).

141. FLA. STAT. § 102.168 (1985).

142. *Id.* § 102.1682(1)-(2).

143. 323 So. 2d 259 (Fla. 1975).

144. 452 So. 2d 564 (Fla. 1984).

145. *Smith v. Tynes*, 412 So. 2d 925 (Fla. 1st DCA 1982).

146. *Bolden v. Potter*, 452 So. 2d 564, 566-67 (Fla. 1984).

B. Recommendations

The major problem with the protest and contest statutes is that they provide no immediate remedy for an election mishap that does not involve fraud. Apparently, no fraud occurred during the Leon County primary in 1986, but the election clearly was not conducted in such a manner that one could be sure that the same winners would have prevailed if the election had run smoothly. The statutes must be broadened. A recent proposal by the Secretary of State is a step in the right direction. It calls for the following major additions to the protest procedures:

The Department of State may investigate irregularities, problems, equipment malfunctions, or other unusual circumstances in the conduct or practice of an election for any office, nomination, constitutional amendment, or other measure presented to the electors. If the Department finds that such irregularities, problems, equipment malfunctions, or other unusual circumstances are significant enough so that the true vote for any such office, nomination, constitutional amendment, or other measure presented to the electors will not be determinable, it may protest the conduct of the election by presenting a written protest to any circuit judge of the circuit wherein the election was held or is being held and may seek to amend the conduct or practice of the election, void the results of the election, or call for the conduct of a special election in its place.

. . . The protest shall be filed at any time while the election is being conducted or within one day of midnight of the date the election occurred. Upon filing such a protest, the Department is entitled to an immediate hearing thereon and to any appropriate relief.

. . . The circuit judge to whom the protest is presented shall have authority to fashion such orders as he may deem necessary to insure that such allegation is investigated, examined, or checked to provide any relief appropriate under such circumstances, including voiding the results of the election and ordering the conduct of a special election.¹⁴⁷

If these procedures had been part of the statutory scheme in 1986, effective steps could have been taken to deal with the problems that arose during the Leon County election. These proposals go considerably beyond the present protest provisions; a

147. Sec. of State, protest procedure proposals to the Fla. S. Comm. on Judiciary-Civ. 3 (Fla. 1987).

showing of fraud would not be required, and specific forms of relief would be provided in addition to giving the judge broad discretion. However, a basic question remains: What if the Department of State chooses not to protest? Then, we are back to square one.

The Legislature should consider incorporating the Secretary of State's recommendations into the law and expanding the grounds on which a candidate or elector could base a protest. Certainly the grounds enumerated by the supreme court for contesting elections could be included in the protest provisions as well. If this were the case, responsibility for initiating protests on election day based upon factors other than fraud would not rest solely with the Department of State. Codification of the supreme court's grounds for contesting elections would also be desirable. This is not legally necessary. However, a candidate who is neither a lawyer nor well-funded or well-connected enough to have ready access to legal advice would find this helpful.

The relief available when elections are contested should also be expanded. Presently, the statute makes clear that a successful challenger can gain the office at the expense of the adverse party. In addition, the court should be given latitude, for example, to delay a second primary while a contest of the first is still underway.

After this discussion, one might ask whether there is any basis for distinguishing between protests and contests. If the protest procedure were used only before the county canvassing board certified a winner, and the contest method were used only after certification, there might be a reasonable basis for some distinction. But this is not the case. After all, the protest can be filed either before the canvassing board adjourns or within five days of the election, whichever occurs last.¹⁴⁸

The second type of protest and the contest provisions should be merged and the Secretary of State's suggestions should be incorporated into the statutes with them. The consolidated provisions should call for immediate hearings on all challenges. Beyond that, the broader provisions of each of the present sections should be included in the code. Thus, standing would belong to the Department of State and any candidate or elector qualified to vote in the race. Grounds would encompass at least those enumerated in *Boardman*, and relief would include confirmation or reversal of the original election, ordering a new election, or whatever remedy the judge found necessary under the circumstances. Alterations along

148. FLA. STAT. § 102.166(2)(a) (1985).

these lines would bring most of Florida's provisions close to compliance with the suggestions of the only comprehensive study on election contests done to date.¹⁴⁹

IV. ACCESS TO BALLOT

The choices presented to voters on election day may affect their decision to go to the polls. Unattractive candidates or lack of competition among the candidates may dampen an individual's enthusiasm to vote.¹⁵⁰

A. Minor Parties

Florida's election code defines a minor political party as one that does not have 5% of the total registered voters of the state registered as members of the party as of January 1 of a primary election year.¹⁵¹ Candidates of a minor party for a statewide office will be placed on the ballot if 3% of the registered electors of the state sign a petition.¹⁵² Minor party candidates for less than statewide offices will not be placed on the ballot unless the party has gathered signatures from 3% of the entire state's registered electors, including signatures from at least 3% of the registered electors of those offices' geographic constituency.¹⁵³ Separate petitions for each county from which the signatures are solicited must be brought to the respective county supervisors by noon of the forty-ninth day before the first primary election.¹⁵⁴

In Florida, the supervisor of each county can choose either to verify each signature or to check a random sample of signatures.¹⁵⁵ However, when the petitions contain at least 15% more than the necessary number of signatures, the petitioner can require that the random sampling method be used.¹⁵⁶ Although the supervisor is entitled to a fee from the candidate or party of either ten cents a signature or the actual cost of verification, whichever is less, the

149. See generally INST. FOR RESEARCH IN PUB. SAFETY, SCHOOL OF PUB. & ENV'T AFFAIRS, IND. UNIV., AN ANALYSIS OF LAWS AND PROCEDURES GOVERNING CONTESTED ELECTIONS AND RECOUNTS: FINAL REPORTS, VOL. II: THE STATE PERSPECTIVE 221-30 (July 31, 1978).

150. See generally Caldeira, Patterson, & Markko, *supra* note 95.

151. FLA. STAT. § 97.021(14) (1985).

152. *Id.* § 99.096(1). An exception to the 3% requirement is that minor party and independent candidates for president and vice president only need signatures of 1% of the registered voters of the state. *Id.* § 103.021(3).

153. *Id.*

154. *Id.* § 99.096(3).

155. *Id.* § 99.097(1).

156. *Id.* § 99.097(2).

fee is waived for candidates who file an oath that they cannot afford to pay.¹⁵⁷ The results of the verification may be contested in the circuit court.¹⁵⁸

Although most other states also require minor parties to submit petitions to get candidates on the ballot, it appears that a majority of states and the District of Columbia require a smaller percentage of signatures than does Florida.¹⁵⁹ Florida and eight other states

157. *Id.* § 99.097(4).

158. *Id.* § 99.097(5).

159. **Alabama:** ALA. CODE § 17-7-1 (Supp. 1986) (1% of registered voters); **Alaska:** ALASKA STAT. § 15.25.160 (Supp. 1987) (1% of voters in last election for statewide office); **Arizona:** ARIZ. REV. STAT. ANN. § 16-801 (1984) (2% of votes for governor or presidential electors in last general election); **Arkansas:** ARK. STAT. ANN. § 3-101(a) (Supp. 1983) (3% of the vote in last gubernatorial or presidential election); **California:** CAL. ELEC. CODE § 6430 (West 1977) (10% of the vote in last gubernatorial election); **Connecticut:** CONN. GEN. STAT. ANN. § 9-453(d) (Supp. 1987) (1% of votes cast for the same office in last election); **District of Columbia:** D.C. CODE ANN. § 1-1312(f) (1987) (1% of registered voters); **Florida:** FLA. STAT. § 99.096(1) (1985) (3% of registered electors); **Georgia:** GA. CODE ANN. § 21-2-180 (1987) (1% of all eligible voters in preceding election); **Hawaii:** HAW. REV. STAT. § 12-5 (1985) (25 registered voters of state of congressional district for members of Congress, governor, or the board of education); **Idaho:** IDAHO CODE § 34-501(c) (Supp. 1987) (2% of aggregate vote in last election of presidential electors); **Illinois:** ILL. ANN. STAT. ch. 46, para. 10-2 (Smith-Hurd Supp. 1987) (1% of voters who voted at next preceding statewide general election or 25,000 signatures, whichever is less); **Indiana:** IND. CODE ANN. § 3-8-6-3 (Burns Supp. 1987) (2% of vote cast in last election for secretary of state); **Iowa:** IOWA CODE ANN. § 45.1 (West Supp. 1987) (1,000 signatures for statewide office); **Kansas:** KAN. STAT. ANN. § 25-302a (1986) (2% of votes cast in last gubernatorial election); **Louisiana:** LA. REV. STAT. ANN. § 18:465(C) (West 1979) (5,000 signatures with at least 500 from each congressional district); **Maine:** ME. REV. STAT. ANN. tit. 21-A, § 303(3) (Supp. 1987) (5% of votes cast in last gubernatorial election); **Maryland:** MD. ANN. CODE art. 33, § 4B-1(h) (Supp. 1985) (3% of voters eligible to vote for that office); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 53, §§ 6, 44 (West Supp. 1987) (2% of votes cast in last gubernatorial election, but at least 10,000 signatures for statewide office); **Michigan:** MICH. COMP. LAWS ANN. § 168.685 (West Supp. 1987) (1% of votes for successful secretary of state in last election, with at least 100 signatures from each of nine congressional districts); **Minnesota:** MINN. STAT. ANN. § 204B.08(3) (West Supp. 1987) (1% of voters who voted in last general election or 2,000 signatures, whichever is less—statewide office); **Mississippi:** MISS. CODE ANN. § 23-15-359(1)(a) (Supp. 1987) (1,000 signatures for statewide office); **Missouri:** MO. ANN. STAT. § 115.315.4 (Vernon Supp. 1987) (signed by the number of registered voters in each congressional district equal to 1% of votes cast in each district in last gubernatorial election or 2% of vote for governor in at least one-half of the congressional districts); **Montana:** MONT. CODE ANN. § 13-10-601 (1987) (5% of votes for the successful candidate for governor in last election); **Nebraska:** NEB. REV. STAT. § 32-526(1) (Supp. 1986) (1% of votes in last gubernatorial election in each of three congressional districts); **Nevada:** NEV. REV. STAT. ANN. § 293.128 (Michie 1986) (5% of votes cast in last general election for congressional representative); **New Mexico:** N.M. STAT. ANN. § 1-8-2(B) (1985) (5% of votes in last presidential or gubernatorial election); **North Carolina:** N.C. GEN. STAT. § 163-96(a)(2) (Supp. 1985) (2% of votes in last gubernatorial election and at least 200 registered voters from four congressional districts); **North Dakota:** N.D. CENT. CODE §§ 16.1-12-02, 16.1-11-30 (Supp. 1987) (10% of registered voters or 3,000 signatures, whichever is less for general elections, *Id.* § 16.1-12-02; 7,000 signatures for primary elections, *Id.* § 16.1-11-30); **Ohio:** OHIO REV. CODE ANN. § 3517.01

base minor party access on a petition signed by a percentage of all registered voters. Florida and Maryland require petitions to be signed by 3% of the registered voters in the state for statewide offices.¹⁶⁰ Six other states carry more lenient requirements than Florida,¹⁶¹ while Oklahoma's requirement of 5% of registered is more stringent.¹⁶²

Other states use a variety of measures in determining the number of petition signatures required to put a minor candidate on the ballot. Many states base signature requirements on a percentage of those voting in a preceding election, usually a gubernatorial or presidential contest. Because the base in these states is the actual number of people voting as opposed to the number of registered citizens, their percentage requirement is not directly comparable to Florida's signature requirement of 3% of all registered voters. Turnout of registered voters in the 1984 presidential election ranged from 56.4% in Mississippi to 84.1% in Virginia.¹⁶³ Nationwide, 72.6% of those who were registered actually voted in the 1984 presidential election.¹⁶⁴

(Anderson Supp. 1986) (1% of votes in last gubernatorial or presidential electors election); **Oklahoma:** OKLA. STAT. ANN. tit. 26, § 5-112 (West Supp. 1987) (5% of registered voters); **Pennsylvania:** PA. STAT. ANN. tit. 25, § 2872.1 (Purdon Supp. 1987) (2,000 signatures for senator and governor with 100 from each of at least 10 counties in the petition for governor; 1,000 signatures for all other statewide offices); **Rhode Island:** R.I. GEN. LAWS § 17-14-7 (Supp. 1986) (1,000 signatures for governor, 500 signatures for congressional and other statewide offices—primary election); **South Carolina:** S.C. CODE ANN. § 7-9-10 (Law. Co-op. 1986) (10,000 signatures of registered voters); **South Dakota:** S.D. CODIFIED LAWS ANN. § 12-5-1 (1982) (10% of votes cast in last gubernatorial election); **Texas:** TEX. ELEC. CODE ANN. § 182.004 (Vernon 1986) (3% of votes in last gubernatorial election—part of these signatures must come from participants in a party convention, *see id.* § 182.003); **Utah:** UTAH CODE ANN. § 20-3-2.5(2)(a) (Supp. 1987) (500 signatures); **Virginia:** VA. CODE ANN. § 24.1-159 (1985) (½ of 1% of registered voters and at least 200 from each congressional district); **West Virginia:** W. VA. CODE § 3-5-23(c) (1987) (1% of votes cast for that office in last general election); **Wisconsin:** WIS. STAT. ANN. § 5.62(2) (West Supp. 1987) (10,000 signatures with at least 1,000 from each of three separate congressional districts); **Wyoming:** WYO. STAT. § 22-5-304 (1987) (5% of votes for congressional representative in last general election for political subdivision for which petition is filed).

160. FLA. STAT. § 99.096 (1985); MD. ANN. CODE art. 33, § 4B-1(h) (Supp. 1985).

161. **Alabama:** ALA. CODE § 17-7-1 (Supp. 1986) (1% of registered voters); **Delaware:** DEL. CODE ANN. tit. 15, § 3001 (1981) (5/100ths of 1% of all registered voters); **Georgia:** GA. CODE ANN. § 21-2-180 (1987) (1% of number of registered and eligible voters in preceding general election); **Illinois:** ILL. ANN. STAT. ch. 46, para. 10-2 (Smith-Hurd Supp. 1987) (1% of registered voters or 25,000 signatures, whichever is less); **Virginia:** VA. CODE ANN. § 24.1-159 (1985) (0.5% of registered voters with at least 200 from each congressional district).

162. OKLA. STAT. ANN. tit. 26, § 5-112 (West Supp. 1987).

163. NON-VOTER STUDY, *supra* note 1 (table showing percentage of registered voters who voted for president).

164. *Id.* (graph showing turnout of registered voters in presidential elections 1960-84).

Thus, a signature requirement of about 4.5% of those voting in a previous election is roughly comparable to Florida's requirement in terms of number of signatures. In fact, the comparable percentage is actually less when, as is often the case, the state's signature requirement is a percentage of the turnout in a gubernatorial or other non-presidential election, because fewer of the eligible voters commonly cast ballots in these elections.¹⁶⁵

Only New Mexico requires the signatures of a percentage of those voting in the previous presidential election, and it requires far fewer signatures than Florida.¹⁶⁶ More states rest their signature requirements on voter turnout in the most recent gubernatorial election. Only Maine requires a number of signatures comparable to Florida's requirement.¹⁶⁷ Four states require far fewer signatures.¹⁶⁸

Some states base their signature requirements on a percentage of votes cast in preceding elections for offices other than for governor or president. Again, these signature requirements are generally easier to meet than Florida's. For example, Connecticut insists on a number of signatures equal to 1% of voters in the last election for that office.¹⁶⁹ Michigan requires a number of signatures equal to 1% of the votes cast for the successful candidate for secretary of state in the last election.¹⁷⁰ Illinois insists on signatures equal to 1% of those voting in the preceding statewide general election or 25,000 qualified voters, whichever is less.¹⁷¹ And Alaska requires a number equal to 1% of the votes cast in the preceding general election.¹⁷²

Other states require a fixed number of signatures rather than a percentage of some base. Generally, these numbers also appear to

165. *See generally id.*

166. N.M. STAT. ANN. § 1-8-2 (1985) (0.5% of the vote in the previous presidential or gubernatorial election).

167. ME. REV. STAT. ANN. tit. 21-A, § 303 (Supp. 1987) (5% of votes cast in last gubernatorial election).

168. **Kansas:** KAN. STAT. ANN. § 25-302a (1986) (2% of vote in last gubernatorial election); **Missouri:** MO. ANN. STAT. § 115.315.4 (Vernon Supp. 1987) (signatures in each congressional district equal to 1% of votes cast in that district in the last gubernatorial election); **Nebraska:** NEB. REV. STAT. § 32-526(1) (Supp. 1986) (1% of votes in last gubernatorial election); **North Carolina:** N.C. GEN. STAT. § 163-96(a)(2) (Supp. 1985) (2% of votes in last gubernatorial election).

169. CONN. GEN. STAT. ANN. § 9-453(b) (Supp. 1987).

170. MICH. COMP. LAWS ANN. § 168.685 (West Supp. 1987).

171. ILL. ANN. STAT. ch. 46, para. 10-2 (Smith-Hurd Supp. 1987).

172. ALASKA STAT. § 15.25.160 (Supp. 1987).

be smaller than Florida's requirement of 3% of all registered voters.¹⁷³

Finally, some states apparently require that minor parties merely file nominating papers with state officials rather than submit signature petitions.¹⁷⁴

Due to this diversity of state requirements, it is impossible to rank the states in terms of ease of minor party access to the ballot. However, it is clear that Florida maintains some of the more burdensome requirements for minor parties trying to get candidates on the ballot, especially when the candidates are not running for statewide offices.

There are, of course, other impediments besides election petition requirements that make it difficult for minor parties to break into our political system.¹⁷⁵ Furthermore, there are numerous arguments both favoring and opposing third parties. These issues will not be considered here. Lawmakers and citizens should be aware, however, that our requirements are stringent compared with other states and discussion should proceed with this fact in mind. At a minimum, the onerous requirements governing minor parties with no statewide candidates should be eased.

B. Independents

Florida law requires independents desiring to run for statewide offices to obtain signatures of a number of the qualified electors equal to 3% of the registered electors of Florida, the same percentage required for minor party candidates for statewide office. A candidate for less than a statewide office must obtain the signatures of

173. **Massachusetts:** MASS. GEN. LAWS ANN. ch. 53, §§ 6, 44 (West Supp. 1987) (general election requires 2% of votes in last gubernatorial election, but at least 10,000 signatures for statewide office); **North Dakota:** N.D. CENT. CODE §§ 16.1-12-02, 16.1-11-30 (Supp. 1987) (general election requires 10% of votes cast in the last election or 3,000 signatures, whichever is less; primary election requires 4,000 signatures); **Rhode Island:** R.I. GEN. LAWS § 17-14-7 (Supp. 1986) (1,000 signatures for governor, 500 signatures for congressman and other statewide offices election); **South Carolina:** S.C. CODE ANN. § 7-9-10 (Law. Co-op. 1986) (10,000 signatures of registered voters); **Utah:** UTAH CODE ANN. § 20-3-2.5(2)(a) (Supp. 1987) (500 signatures); **Wisconsin:** WIS. STAT. ANN. § 5.62(2) (West 1986) (10,000 signatures with at least 1,000 from each of three separate congressional districts).

174. See, e.g., OR. REV. STAT. ANN. §249.720 (Butterworth 1986) (must hold nominating convention and submit certificate of nomination); VT. STAT. ANN. tit. 17, chs. 45, 49, sub. ch.2 (1982 & Supp. 1987) (must caucus and submit nominating papers).

175. See generally D. MAZMANIAN, *THIRD PARTIES IN PRESIDENTIAL ELECTIONS* 88-110 (1974) (constraints include gaining access to the media and the impact of the electoral college).

3% of the registered citizens of the district for that office.¹⁷⁶ As with minor party access to the ballot, states vary greatly with regard to their requirements for independents' access.¹⁷⁷ Florida's

176. FLA. STAT. § 99.0955(2) (1985). As with minor parties, the requirement for an independent candidate for president or vice president to be placed on the ballot is also 1% of the registered electors of the state. *Id.* § 103.021(3).

177. **Alabama:** ALA. CODE § 17-7-1 (Supp. 1986) (1% of registered voters); **Alaska:** ALASKA STAT. § 15.25.160 (1987) (3% of votes in last general election); **Arizona:** ARIZ. REV. STAT. ANN. § 16-341.E (Supp. 1986) (1% of qualified electors); **Arkansas:** ARK. STAT. ANN. § 3-105 (Supp. 1983) (3% of qualified electors or 10,000 signatures, whichever is less); **California:** CAL. ELEC. CODE § 6831 (West 1977) (1% of registered voters for statewide office; 3% for other than statewide office); **Colorado:** COLO. REV. STAT. § 1-4-801 (Supp. 1986) (5,000 signatures for President and Vice-President; 1,000 for statewide office; 500 for congressional representative; 300 for general assembly); **Connecticut:** CONN. GEN. STAT. ANN. § 9-453d (West Supp. 1987) (1% of votes for same office in last election); **Delaware:** DEL. CODE ANN. tit. 15, § 3002 (1981) (1% of registered voters eligible to vote for that office); **District of Columbia:** D.C. CODE ANN. § 1-1312(j)(1) (1987) (1.5% of all registered voters or 3,000, whichever is less); **Florida:** FLA. STAT. § 99.0955(2) (1985) (3% of registered voters in state); **Georgia:** GA. CODE ANN. § 21-2-170 (1987) (1% of eligible voters for statewide races; other offices, 5% of voters eligible to vote in that race); **Hawaii:** HAW. REV. STAT. § 12-5 (1985) (25 registered voters of state or congressional district for election of governor, Congressman, or board of education); **Idaho:** IDAHO CODE §§ 34-604, -607 to -613, -708, -708A (1981) (3% of votes cast for presidential electors, for president and vice-president; 1,000 signatures for statewide offices); **Indiana:** IND. CODE ANN. § 3-8-6-3 (Burns Supp. 1987) (2% of vote cast for secretary of state in the district the candidate is seeking to represent); **Iowa:** IOWA CODE ANN. § 45.1(1), (2) (West Supp. 1987) (1,000 signatures for statewide office; county or district offices require 2% of votes cast in the county or district); **Kansas:** KAN. STAT. ANN. § 25-303 (1986) (2,500 signatures of qualified voters for statewide office; 5% of the qualified voters in county for county office); **Kentucky:** KY. REV. STAT. ANN. § 118.315(2) (Michie/Bobbs-Merrill Supp. 1986) (5,000 signatures for statewide office; 400 signatures for congressional representative or district office); **Louisiana:** LA. REV. STAT. ANN. § 18:465(C)(1) (West 1979) (5,000 signatures with at least 500 from each congressional district); **Maine:** ME. REV. STAT. ANN. tit. 21-A, § 354(5) (Supp. 1986) (4,000 signatures for statewide elections); **Maryland:** MD. ANN. CODE art. 33, § 7-1(b)(2) (1983) (3% of registered voters eligible to vote for that office); **Massachusetts:** MASS. GEN. LAWS ANN. ch. 53, § 6 (West Supp. 1987) (2% of votes in last gubernatorial election); **Minnesota:** MINN. STAT. ANN. § 204B.08(3) (West Supp. 1987) (1% of voters who voted in last general election or 2,000 signatures, whichever is less, for statewide office); **Mississippi:** MISS. CODE ANN. § 23-15-359(1)(a) (Supp. 1987) (1,000 signatures for statewide office); **Missouri:** MO. ANN. STAT. § 115.321(3) (Vernon Supp. 1987) (signed by the number of registered voters in each congressional district equal to 1% of votes cast in that district in last general election, or 2% of the vote in ½ of the congressional districts); **Montana:** MONT. CODE ANN. § 13-10-502(2) (1987) (5% of vote cast for the successful candidate in last general election for the same office); **Nevada:** NEV. REV. STAT. ANN. § 293.200.1 (Michie 1986) (5% of total vote for that office in last general election); **New Hampshire:** N.H. REV. STAT. ANN. § 655:42 (1986) (3,000 signatures with at least 1,500 from each congressional district); **New Jersey:** N.J. STAT. ANN. § 19:13-5 (West 1964) (800 signatures for statewide office; 2% of vote cast locally for General Assembly at last general election up to 100 signatures); **New Mexico:** N.M. STAT. ANN. § 1-8-51(c) (1985) (5% of votes cast in last general election for governor with at least 3% of votes cast in each of at least ten counties); **New York:** N.Y. ELEC. LAW § 6-142 (McKinney 1978) (25,000 signatures with at least 100 from each of one-half of the congressional districts); **North Carolina:** N.C. GEN. STAT. §

provisions for independent access are more stringent than most other states' provisions.

Several states, including Florida, require a percentage of all registered voters to sign a petition for an independent candidate to get on the ballot.¹⁷⁸ Only Oregon uses the preceding election for presidential electors as the bench mark for its independent signature requirements, requiring a number equal to 3% of the vote for statewide offices and congressional representatives and 5% for any other office.¹⁷⁹ At least five states require a number of signatures

163-122(a)(1) (1982) (2% of registered voters for statewide office); **North Dakota:** N.D. CENT. CODE § 16.1-12-02(5)(a) (Supp. 1987) (1,000 signatures); **Ohio:** OHIO REV. CODE ANN. § 3513.257(A) (Anderson Supp. 1987) (5,000 registered voters); **Oklahoma:** OKLA. STAT. ANN. tit. 26, § 5-112 (West Supp. 1987) (5% of registered voters or pay a filing fee: governor—\$1,500, senator—\$1,000, Congressman—\$750); **Oregon:** OR. REV. STAT. ANN. § 249.740 (Butterworth 1986) (3% of votes cast for presidential electors in last general election for statewide or congressional representative; 5% for every other office); **Pennsylvania:** PA. STAT. ANN. tit. 25, 2872.1 (Purdon Supp. 1987) (2,000 signatures for President, Senator or Governor; 1,000 for other statewide office); **Rhode Island:** R.I. GEN. LAWS § 17-16-8 (Michie Supp. 1986) (1,000 signatures for governor; 500 for congressman or statewide offices); **South Carolina:** S.C. CODE ANN. § 7-11-70 (Law. Co-op. Supp. 1986) (5% of registered voters eligible to vote for that office not to exceed 10,000); **South Dakota:** S.D. CODIFIED LAWS ANN. § 12-7-1 (1982) (1% of the vote for governor within the district or political subdivision); **Tennessee:** TENN. CODE ANN. § 2-5-101(b)(1) (Supp. 1987) (25 signatures); **Texas:** TEX. REV. CIV. STAT. ANN. § 142.007 (Vernon 1986) (1% of the vote in last gubernatorial election for statewide office; 5% of the district vote in the last gubernatorial election or 500 signatures, whichever is less, for district office); **Utah:** UTAH CODE ANN. § 20-3-38(1)(c)(ii) (Supp. 1987) (300 signatures for statewide office; 100 for district); **Vermont:** VT. STAT. ANN. tit. 17, § 2402(4)(b)(1)-(2) (Supp. 1986) (1,000 signatures for statewide office; 200 for county-wide office); **Virginia:** VA. CODE ANN. § 24.1-168 (Supp. 1987) (.5% of the voters registered in the district for statewide office, including at least 200 from each congressional district); **West Virginia:** W. VA. CODE § 3-5-23(c) (1987) (1% of votes in last general election for the same office in the political subdivision); **Wisconsin:** WIS. STAT. ANN. § 8.15(6)(a)-(b) (West 1986) (2,000 to 4,000 signatures for statewide office; 1,000 to 2,000 signatures for congressional representative); **Wyoming:** WYO. STAT. § 22-5-304 (1986) (5% of the votes cast for congressional representative in the last general election for the political subdivision for which the petition is filed).

178. **Alabama:** ALA. CODE § 17-7-1 (Supp. 1986) (1%); **Arkansas:** ARK. STAT. ANN. § 3-105 (Supp. 1983) (3% of registered voters or 10,000 signatures, whichever is lesser); **California:** CAL. ELEC. CODE § 6831 (West 1977) (1% of all voters for statewide offices; 3% of the district for local or regional offices); **Georgia:** GA. CODE ANN. § 21-2-170(b) (1987) (1% for statewide offices; 5% if the district for local or regional offices); **Maryland:** MD. ANN. CODE art. 33, § 7-1(b)(2) (1983) (3% of registered voters eligible to vote for that issue); **North Carolina:** N.C. GEN. STAT. § 163-122(a)(1) (1982) (2% for statewide office); **Oklahoma:** OKLA. STAT. ANN. tit. 26, § 5-112 (West Supp. 1987) (5% of registered voters or pay a filing fee: governor—\$1,500; senator—\$1,000; Congressperson—\$750); **South Carolina:** S.C. CODE ANN. § 7-11-70 (Law. Co-op. Supp. 1986) (5% of registered voters eligible to vote for that office not to exceed 10,000).

179. OR. REV. STAT. ANN. § 249.740 (Butterworth 1986) (3% for statewide or United States congressional offices; 5% of the district for regional or local offices). Idaho also requires a number equal to percentage of people in the state who voted in the last presidential

equal to a percentage of those who voted in the most recent gubernatorial election.¹⁸⁰ Arizona bases its requirement on the number of votes cast in either the last gubernatorial or presidential election.¹⁸¹

At least seven states call for a certain percentage of the vote cast in either the preceding general election, the previous election for the particular office being contested, or the vote in another stipulated race. Of the seven, only Wyoming and Nevada require a percentage comparable to Florida's requirement.¹⁸² The other five are more lenient, generally asking for 1% or 2% of the vote in an earlier election.¹⁸³

Finally, a number of states insist on a fixed number of petition signatures rather than a percentage of some base. Generally the requirements in those states seem more lenient than Florida's.¹⁸⁴

election, but only for candidates wanting to get on the ballot for president or vice president. IDAHO CODE §§ 34-708, -708A (1981).

180. **Massachusetts:** MASS. GEN. LAWS ANN. ch. 53, § 6 (West Supp. 1987) (2%); **Missouri:** MO. ANN. STAT. § 115.321(3) (Vernon Supp. 1987) (1% of vote in each congressional district or 2% of vote in one-half of the congressional districts); **Montana:** MONT. CODE ANN. § 13-10-502 (1987) (5% of votes cast for the successful gubernatorial candidate in the last election or 5% of the votes for the last successful candidate for the office currently at stake); **New Mexico:** N.M. STAT. ANN. § 1-8-51(c) (1985) (5% of vote cast in last general election for governor with at least 3% of vote cast in each of at least ten counties); **South Dakota:** S.D. CODIFIED LAWS ANN. § 12-7-1 (1982) (1%).

181. ARIZ. REV. STAT. ANN. § 16-341F (Supp. 1986) (1%).

182. NEV. REV. STAT. ANN. § 293.200.1 (Michie 1986) (5% of votes cast for that office during the last general election); WYO. STAT. § 22-5-304 (1986) (5% of votes cast in the last general election for congress in the district or political subdivision for which the petition is filed).

183. **Alaska:** ALASKA STAT. § 15.25.160 (1987) (3% of votes in last general election); **Indiana:** IND. CODE ANN. § 3-8-6-3 (Burns Supp. 1987) (2% of votes cast for secretary of state in the district the candidate seeks to represent); **Montana:** MONT. CODE ANN. § 13-10-502 (Supp. 1987) (5% of votes cast for the successful candidate in last general election for the same office); **New Jersey:** N.J. STAT. ANN. § 19:13-5 (West 1964) (800 signatures for statewide office; 2% of vote cast locally for General Assembly at last general election, up to 100 signatures, for local office); **West Virginia:** W. VA. CODE § 3-5-23(c) (1987) (1% of votes in last general election for the same office).

184. **Colorado:** COLO. REV. STAT. § 1-4-801 (Supp. 1986) (5,000 signatures for president and vice president; 1,000 for statewide office; 500 for congressional representative); **Iowa:** IOWA CODE ANN. § 45.1(1) (West Supp. 1987) (1,000 signatures for statewide office); **Kansas:** KAN. STAT. ANN. § 25-303 (1986) (2,500 signatures for statewide office); **Kentucky:** KY. REV. STAT. ANN. § 118.315(2) (Michie/Bobbs-Merrill Supp. 1986) (5,000 signatures for statewide office; 400 signatures for congressional representative or district office); **Mississippi:** MISS. CODE ANN. § 23-15-359(1)(a) (Supp. 1987) (1,000 signatures for statewide office); **Ohio:** OHIO REV. CODE ANN. § 3513.257(A) (Anderson Supp. 1987) (5,000 signatures of registered voters); **Tennessee:** TENN. CODE ANN. § 2-5-101(b)(1) (Supp. 1987) (25 signatures); **Utah:** UTAH CODE ANN. § 20-3-38(1)(c)(ii) (Supp. 1987) (300 signatures for statewide office; 100 for district office); **Vermont:** VT. STAT. ANN. tit. 17, § 2402(4)(b)(1)-(2) (Supp. 1986) (1,000 signatures for statewide office; 200 for countywide office); **Wisconsin:** WIS. STAT.

As with minor party access requirements, it is impossible to rank the states with regard to ease of access to the ballot for independent candidates because the states' requirements are so diverse. Generally, however, Florida's laws are more prohibitive than most.

Candidates running as independents will be unsuccessful in a race unless there is acute dissatisfaction with nominees of the major parties. If this alienation from the dominant organizations exists, candidates not pledged to a party should not have to face significant constraints to get on the ballot. Florida's signature requirement should be reduced to 1% of the registered voters of the district covered by that office.

V. CONCLUSION

Florida's election laws are some of the more restrictive in the United States, and this should be changed. To remedy the problem, Florida should adopt a comprehensive mail registration system for all citizens with registration forms conveniently located in places such as shopping malls, libraries, and government agencies. Florida's statute allowing registration in state, county, and municipal agencies should be implemented. Registration deadlines should be shortened or eliminated. Furthermore, registration books should not be purged more than once every four years.

In addition, voting hours should be expanded and the state should experiment with holding some local elections on weekends. Florida should clarify how its absentee voting provisions work with the absentee registration provisions. And the state should make the absentee voting provisions conform more closely with the National Municipal League's Model Election Code.

The ability to challenge mishandled or fraudulent elections bolsters confidence in the democratic system and may encourage citizens to participate. Therefore, Florida should adopt the Secretary of State's recommendations which would make the protest provisions more effective and should merge those provisions with expanded contest provisions.

Finally, Florida should ease its requirements governing access to the ballot for independent candidates and for minor parties with no statewide candidates. Citizens who stay home from the polls because they feel candidates representing mainstream political parties fail to offer inspired answers to the issues may vote when of-

ferred new ideas by minor party and independent candidates. An active electorate is essential to the survival of a democracy. As much as possible, the doors should be opened to encourage participation in the democratic process.